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No. _____, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATES OF TEXAS, FLORIDA, ALABAMA, MISSISSIPPI, AND SOUTH CAROLINA,
Defendants.

ACTION IN ORIGINAL JURISDICTION

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND SUPPORTING BRIEF

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UNITED STATES SUPREME COURT

STATE OF CALIFORNIA, Plaintiff,	)	NO. _____, Original
v.	)	MOTION FOR LEAVE TO FILE COMPLAINT
STATES OF TEXAS, FLORIDA, ALABAMA, MISSISSIPPI, AND SOUTH CAROLINA, Defendants.	)	

The State of California, appearing by its Attorney General George Deukmejian,

respectfully requests leave of this Court to file the Complaint submitted herewith against the States of Texas, Florida, Alabama, Mississippi and South Carolina. The State of California seeks to bring this suit under authority of Article III, Section 2, Clause 2 of the U. S. Constitution and under authority of 28 U.S.C. § 1251(a)(1).

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UNITED STATES SUPREME COURT

STATE OF CALIFORNIA, Plaintiff, v. STATES OF TEXAS, FLORIDA, ALABAMA, MISSISSIPPI, AND SOUTH CAROLINA, Defendants.	NO. _____, Original COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The State of California brings this action against the States of Texas,

Florida, Alabama, Mississippi, and South Carolina to restrain those states from restricting the movement in interstate commerce of food products grown in California. Plaintiff State of California alleges as follows:

ACTION AND JURISDICTION

I

1. This is an action for injunctive and declaratory relief by the State of California against the States of Texas, Florida, Alabama, Mississippi, and South Carolina.

II

2. This Court has original and exclusive jurisdiction of this controversy pursuant to Article III, Section 2, Clause 2 of the United States Constitution, and pursuant to 28 U.S.C. § 1251(a)(1).

PARTIES

3. The STATE OF CALIFORNIA is a sovereign state of the United States of America, and was admitted into the Union on September 9, 1850.

4. The STATE OF TEXAS is a sovereign state of the United States of America, and was admitted into the Union on December 29, 1845.

5. The STATE OF FLORIDA is a sovereign state of the United States of America, and was admitted into the Union on March 3, 1845.

6. The STATE OF ALABAMA is a sovereign state of the United States of America, and was admitted into the Union on December 14, 1819.

7. The STATE OF MISSISSIPPI is a sovereign state of the United States of America, and was admitted into the Union on December 10, 1817.

8. The STATE OF SOUTH CAROLINA is a sovereign

state of the United States of America, and was admitted into the Union on May 23, 1788.

NATURE OF THE CONTROVERSY

9. The Mediterranean fruit fly, Ceraltitis capitata Wiedeman ("Medfly"), is a pest that is destructive to many classes of fruits and vegetables, including citrus fruits. The female fly lays 10-20 eggs under the skin of the fruit, causing the fruit to become discolored and mushy. The fruit often ripens prematurely, and falls to the ground. The maggots then leave the fruit, enter the soil on the ground, and turn into pupae. After a few days, the pupae hatch into adults and fly away. The Medfly has a very short life cycle, which permits the rapid development of serious outbreaks. The Medfly can cause serious economic losses to large regions, including complete loss of crops. It is presently found in most continents of the world.

10. California has been invaded by the Medfly three times in recent years. The first infestation was discovered in the Los Angeles area in 1975. The infestation, which covered 35 square miles, was eradicated by the combined action of state and county officials. The second infestation was discovered in the Los Angeles area on June 5, 1980. The infestation was again eradicated by the combined action of state and county officials, and the last fly was trapped on July 15, 1980. The third infestation, which is the subject of this action, was discovered in parts of Santa Clara County and Alameda County on June 5, 1980. This infestation has existed longer, and is more pervasive, than the other infestations described above.

CALIFORNIA ERADICATION AND QUARANTINE PROGRAM

11. On June 6, 1980, the California Department of Food and Agriculture (CDFA) adopted an eradication program for the

Medfly infestation in Santa Clara and Alameda Counties. See California Administrative Code, Title 3, § 3591.5. Under this eradication program, various methods are provided for the eradication of the Medfly from fruits and vegetables in the infested area. These methods include the use of pesticide sprays, liberation of millions of sterile male flies which breed with fertile female flies but produce no offspring, and removal of host fruits and vegetables in which eggs might mature.

12. On October 22, 1980, CDFA adopted a quarantine on the movement of certain fruits and vegetables grown in infested regions of Santa Clara and Alameda Counties. See California Administrative Code, Title 3, § 3406. Under this quarantine, all fruits and vegetables grown within the quarantine area which might serve as hosts

of the Medfly could not be removed from the area until such fruits and vegetables were treated by a method approved by the Director of the CDFA. The Director approved the movement of such fruits and vegetables only if they were treated by fumigation or cold storage. That fumigation consisted of application of ethyl dibromide or methyl bromide, depending on the type of fruit or vegetable.

13. The quarantine area initially established by CDFA encompassed approximately 500 square miles in Santa Clara and Alameda Counties, including a 50 square mile area that constituted the core area of the infestation. The quarantine area thus included a large buffer zone surrounding the immediate infestation area, to guard against the possibility that the infestation might unknowingly spread beyond the core area. The quarantine line

was established under agreement with federal, state and county officials. The quarantine line was drawn in appreciation of the fact that California, with its important agricultural industry, had the most to lose if the quarantine was not fully effective.

14. On December 24, 1980, at Governor Edmund G. Brown, Jr. proclaimed a state of emergency with respect to the Medfly infestation. Pursuant to that emergency proclamation, state, federal and county officials undertook a vigorous program to eradicate the Medfly from the infested area in Santa Clara and Alameda Counties. This emergency program was implemented by personnel from various state and county agencies. Commencing in December, 1980, several hundred members of the California Conservation Corps and other agencies

stripped all host fruit from trees within the 50 square mile core infestation area, and eventually collected approximately 2,000 tons of host fruit. Additionally, bait spray was applied to all host foliage within the core area, and insecticides were sprayed on the ground as a soil drench to kill larvae entering the soil and flies emerging from the pupae. Every resident in the core area was personally contacted, or otherwise received notice, advising of the schedule for the removal of host plants from each such residence. In addition, approximately 100 million sterile male files were released each week to attract fertile female flies.

15. For several months, the initial CDFA quarantine and eradication effort appeared to be working. No finds of larvae or flies occurred outside the center of the 50 square mile core area

in Santa Clara County in December, 1980, or January or February, 1981. Only one isolated fly find occurred in March, 1981. There were no wild Medfly finds in Alameda County, nor larvae finds during the same period. Between April 6 and the present 43 wild female flies were found in traps, but in most cases they were accompanied by sterile flies in excess of the USDA recommended ratio of 100 steriles to one wild fly. Indeed, as of the present time, one wild male Medfly has been trapped in 1981, and no wild female Medflies have been trapped since June 5, 1981.

16. On or about June 15, 1981 a Medfly larval find was made in Palo Alto, located outside the initial 50 square mile core area. That find indicated that the Medfly was continuing to breed.

Since that initial larval find, additional finds have been made outside the original 50 square mile core area, but within the boundaries of the counties of Santa Clara, Alameda and San Mateo. No larval finds and no wild Medflies have been found outside the boundaries of those three counties. Based upon the occurrence of the aforementioned larval finds, CDFA in July 1981 expanded the quarantine area to encompass all of Santa Clara, Alameda, and San Mateo Counties, an area of approximately 2200 square miles. In addition, CDFA on the same date expanded the core area of infestation to include an area of approximately 180 square miles located within the above three counties. The quarantine area thus continues to include a large buffer zone surrounding the immediate infestation area to guard against the possibility that the infestation might unknowingly spread beyond the core area. This expanded

quarantine line was established under agreement with federal, state and county officials.

17. On or about July 10, 1981, the Governor of the State of California ordered the aerial application of pesticide sprays to commence within the expanded 180 square-mile core infestation area. On or about 2 o'clock a.m., July 13, 1981, the aerial application of Malathion by helicopter commenced within the core area of infestation. Pursuant to the Governor's order, the aerial application of Malathion bait sprays is continuing on a daily basis within the quarantine area established by CDFA.

FEDERAL QUARANTINE PROGRAM

18. On July 25, 1980, the U.S. Department of Agriculture (USDA) adopted its own quarantine program relating to the Medfly infestation of parts of Santa Clara and Alameda Counties. The quarantine

was adopted pursuant to the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. See 45 Fed.Reg. 50318-50324 (July 29, 1980). The Medfly infestation is a dangerous plant disease, which is new or not theretofore widely prevalent or distributed within or throughout the United States, and the Secretary of Agriculture so determined. Id.

19. Under the USDA quarantine program adopted on July 25, 1980, certain fruits and vegetables grown in the infested area cannot be moved in interstate commerce in the absence of a certificate or permit issued by the USDA. Id. at 50322, §331.1-3. The USDA cannot issue such a certificate or permit unless the fruit or vegetable has been treated by fumigation or cold storage. Id. at 50322, 50324, §§ 331.1-3, 331.1-9. The fumigation, to the extent applicable, must consist of application of ethyl dibromide or methyl bromide,

depending on the type of fruit or vegetable. Id.

20. Based upon the recent larval finds described above, the USDA, on or about July 21, 1981, amended its quarantine program pursuant to the Federal Plant Quarantine Act, 7 U.S.C. §§ 151-167. See 46 Fed.Reg. 36148. Pursuant to the amendment, the Federal Quarantine Program, like the expanded quarantine adopted by CDFA, now encompasses all of Santa Clara, Alameda and San Mateo Counties. Like the expanded quarantine adopted by CDFA, the amended federal quarantine also includes a large buffer zone surrounding the immediate infestation area, to guard against the possibility that the infestation might unknowingly spread beyond the core area. Further, the federal quarantine, like the expanded quarantine adopted by CDFA,

does not extend beyond the boundaries of the counties of Santa Clara, Alameda and San Mateo. Fruit and vegetables grown within the expanded federal quarantine area are subject to the same fumigation and cold storage requirements imposed by the CDFA quarantine.

TEXAS QUARANTINE PROGRAM

21. On or about July 15, 1981, Reagan V. Brown, Texas Agriculture Commissioner, acting on behalf of the State of Texas, established a quarantine on California fruits and vegetables. Said quarantine imposes a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantine adopted by the USDA or the quarantine adopted by CDFA. First, the Texas order quarantines the entire State of California, not simply the three counties

where fertile Medflies or Medfly larvae have been found. Second, the Texas quarantine imposes a certification requirement upon California, which requirement states that California fruits and vegetables grown in Medfly-free counties may not enter or be transported through Texas unless accompanied by a certificate of origin issued by CDFA. Such certificate must state that the county of origin is Medfly-free and may be issued only when Jackson or Steiner Medfly traps have been placed throughout the County of Origin at a density of 5 traps per square-mile and baited with Tri-Med lure. Even if such traps are in place at the required density and baited with the required lure, the Texas quarantine provides no certificate may be issued until the traps have been operated, maintained and inspected for a period of

30 days. Finally, in the alternative to such certification, the Texas quarantine requires that California fruits and vegetables from outside the areas quarantined by the USDA be fumigated and/or placed into cold storage.

22. By imposing the above described requirements not found in the USDA or CDFA quarantines, the Texas quarantine imposes a de facto embargo on all California fruits and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a density of 5 traps per square mile in urban areas outside the area covered by the federal quarantine. Identical traps are currently maintained in Medfly-free rural areas at the rate of one per square mile. Because of the migratory patterns of the Medfly, the current

trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presently possess sufficient Jackson or Steiner traps to comply with the trap density requirements imposed by the Texas quarantine. Said quarantine would require the placement of more than 800,000 traps in areas as far as 500 miles from the closest Medfly or larval find at a cost of more than 100 million dollars. It is unlikely that the task could ever be completed. Moreover, even if traps could be laid immediately, California could nevertheless not provide the certification required by Texas since the Texas quarantine requires the traps to have operated, inspected and maintained for 30 days prior to certification. Said 30 day requirement, by itself, will prohibit the issuance of certification

until long after California fruits and vegetables have been harvested. Texas is the only state among the defendant states to impose such a requirement upon California. The effect of the Texas quarantine is to embargo California fruits and vegetables that would otherwise be shipped into or through Texas from Medfly-free counties. Although California maintains traps in adequate numbers to determine whether the Medfly is moving outside of the quarantine area established by USDA and CDFA, and although those traps have shown no such movement, the Texas quarantine nonetheless subjects such fruit and vegetables to a certification requirement that cannot possibly be met in time to permit interstate shipments during the present shipping season. Because said certification requirement cannot be met,

such fruits and vegetables will be subjected under the Texas order to fumigation and/or cold storage requirements. Even if sufficient fumigation and/or cold storage facilities were available, such requirements would be unnecessary, dangerous and damaging to shipments of California crops. California is informed and believes, however, that neither Texas nor California, separately or together, possess sufficient fumigation and/or cold storage facilities to process the volume of fruits and vegetables that would otherwise be shipped from California to Texas.

FLORIDA QUARANTINE PROGRAM

23. On or about July 15, 1981, the State of Florida established a quarantine on California fruits and vegetables. Said quarantine imposes a variety of limitations on the interstate

shipment of California fruits and vegetables that are not included within the quarantine adopted by the USDA or the quarantine adopted by CDFA. First the Florida order quarantines the entire State of California, not simply the three counties where fertile Medflies or Medfly larvae have been found. Second, the Florida quarantine imposes a certification requirement upon fruits and vegetables grown in Medfly-free counties outside the counties quarantined by the USDA. Under said certification requirement, shipments of California fruits and vegetables from Medfly-free counties may not enter or be transported through Florida unless accompanied by a certificate of origin issued by CDFA or the USDA. Such certificate must state that the county of origin is Medfly-free and may be issued only when

Jackson or Steiner Medfly traps have been placed throughout the county of origin at a density of five traps per square-mile and baited with Tri-Med lure. Finally, in the alternative to such certification, the Florida quarantine requires that California fruits and vegetables from outside the areas quarantined by the USDA be fumigated and/or placed into cold storage.

24. By imposing the above described requirements not found in the USDA or CDFA quarantines, the Florida quarantine imposes a de facto embargo on all California fruits and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a density of five traps per square mile in urban areas outside the area covered by the federal quarantine. Identical traps

are currently maintained in Medfly-free rural reas at the rate of one per square mile. Because of the migratory patterns of the Medfly, the current trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presently possess sufficient Jackson or Steiner traps to comply with the trap density requirements imposed by the Florida quarantine. Said quarantine would require the placement of more than 800,000 traps in areas as far as 500 miles from the closest Medfly or larval find at a cost of more than 100 million dollars. It is unlikely that the task could ever be completed. The effect of the Florida quarantine is to embargo California fruits and vegetables that would otherwise be shipped into or through Florida from Medfly-free

counties. Although California maintains traps in adequate numbers to determine whether the Medfly is moving outside of the quarantine area established by USDA and CDFA, and although those traps have shown no such movement, the Florida quarantine nonetheless subjects such fruit and vegetables to a certification requirement that cannot possibly be met in time to permit interstate shipments during the present shipping season. Because said certification requirements cannot be met, such fruits and vegetables will be subjected under the Florida order to fumigation and/or cold storage requirements. Even if sufficient fumigation and/or cold storage facilities were available, such requirements would be unnecessary, dangerous and damaging to shipments of California crops. California is informed and

believes, however, that neither Florida nor California, separately or together, possess sufficient fumigation and/or cold storage facilities to process the volume of fruits and vegetables that would otherwise be shipped from California to Florida.

ALABAMA QUARANTINE PROGRAM

25. On or about July 15, 1981, the State of Alabama established a quarantine on California fruits and vegetables. Said quarantine imposes a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantine adopted by CDFA. First the Alabama order quarantines the entire State of California, not simply the three counties where fertile Medflies or Medfly larvae have been found. Second the Alabama quarantine imposes a

certification requirement upon fruits and vegetables grown in Medfly-free counties outside the counties quarantined by the USDA. Under said certification requirement, shipments of California fruits and vegetables from Medfly-free counties may not enter or be transported through Alabama unless accompanied by a certificate of origin issued by CDFA. Such certificate must state that the county of origin is Medfly-free and may be issued only when Jackson or Steiner Medfly traps have been placed throughout the county of origin at a density of five traps per square-mile and baited with Tri-Med lure. Finally, in the alternative to such certification, the Alabama quarantine requires that California fruits and vegetables from outside the areas quarantined by the USDA be fumigated and/or placed into

cold storage.

26. By imposing the above described requirements not found in the USDA or CDFA quarantines, the Alabama quarantine imposes a de facto embargo on all California fruits and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a density of five traps per square mile in urban areas outside the area covered by the federal quarantine. Identical traps are currently maintained in Medfly-free rural areas at the rate of one per square mile. Because of the migratory patterns of the Medfly, the current trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presently possess sufficient Jackson or Steiner traps to comply with the trap

density requirements imposed by the Alabama quarantine. Said quarantine would require the placement of more than 800,000 traps in areas as far as 500 miles from the closest Medfly or larval find at a cost of more than 100 million dollars. It is unlikely the task could ever be completed.

The effect of the Alabama quarantine is thus to embargo California fruits and vegetables that would otherwise be shipped into or through Alabama from Medfly-free counties. Although California maintains traps in adequate numbers to determine whether the Medfly is moving outside of the quarantine area established by USDA and CDFA, and although those traps have shown no such movement, the Alabama quarantine nonetheless subjects such fruit and vegetables to a certification

requirement that cannot possibly be met in time to permit interstate shipments during the present shipping season. Because said certification requirements cannot be met, such fruits and vegetables will be subjected under the Alabama order to fumigation and/or cold storage requirements. Even if sufficient fumigation and/or cold storage facilities were available, such requirements would be unnecessary, dangerous and damaging to shipments of California crops. California is informed and believes, however, that neither Alabama nor California , separately or together, possess sufficient fumigation and/or cold storage facilities to process the volume of fruits and vegetables that would otherwise be shipped from California to Alabama.

MISSISSIPPI QUARANTINE PROGRAM

27. On or about July 15, 1981 the State of Mississippi established a quarantine on California fruits and vegetables. Said quarantine imposes a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantine adopted by the USDA or the quarantine adopted by CDFA. First the Mississippi order quarantines the entire State of California, not simply the three counties where fertile Medflies or Medfly larvae have been found. Second, the Mississippi quarantine imposes a certification requirement upon fruits and vegetables grown in Medfly-free counties outside the counties quarantined by the USDA. Under said certification requirements, shipments of California fruits and vegetables

may not enter or be transported through Mississippi unless accompanied by a certificate or origin issued by CDFA. Such certificate must state that the county of origin is Medfly-free and may be issued only when Jackson or Steiner Medfly traps have been placed throughout the county of origin at a density of five traps per square-mile and baited with Tri-Med lure. Finally, in the alternative to such certification, the Mississippi quarantine requires that California fruits and vegetables from outside the areas quarantined by the USDA be fumigated and/or placed into cold storage.

28. By imposing the above described requirements not found in the USDA or CDFA quarantines, the Mississippi quarantine imposes a de facto embargo on all California fruits

and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a density of five traps per square mile in urban areas outside the area covered by the federal quarantine. Identical traps are currently maintained in Medfly-free rural areas at the rate of one per square mile. Because of the migratory patterns of the Medfly, the current trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presently possess sufficient Jackson or Steiner traps to comply with the trap density requirements imposed by the Mississippi quarantine. Said quarantine would require the placement of more than 800,000 traps in areas as far as 500 miles from the closest Medfly or larval find at a

cost of more than 100 million dollars. It is unlikely the task could ever be completed.

The effect of the Mississippi quarantine is to embargo California fruits and vegetables that would otherwise be shipped into or through Mississippi from Medfly-free counties. Although California maintains traps in adequate numbers to determine whether the Medfly is moving outside of the quarantine area established by USDA and CDFA, and although those traps have shown no such movement, the Mississippi quarantine nonetheless subjects such fruit and vegetables to a certification requirement that cannot possibly be met in time to permit interstate shipments during the present shipping season.

Because said certification requirements cannot be met, such fruits and vegetables will be subjected under the Mississippi order to fumigation and/or cold storage requirements. Even if sufficient fumigation and/or cold storage facilities were available, such requirements would be unnecessary, dangerous and damaging to shipments of California crops. California is informed and believes, however, that neither Mississippi nor California, separately or together, possess sufficient fumigation and/or cold storage facilities to process the volume of fruits and vegetables that would otherwise be shipped from California to Mississippi.

SOUTH CAROLINA QUARANTINE PROGRAM

29. On or about July 15, 1981, the State of South Carolina established a quarantine on California fruits and

vegetables. Said quarantine imposes a variety of limitations on the interstate shipment of California fruits and vegetables that are not included within the quarantine adopted by the USDA or the quarantine adopted by CDFA. First the South Carolina order quarantines the entire State of California, not simply the three counties where fertile Medflies or Medfly larvae have been found. Second, the South Carolina quarantine imposes a certification requirement upon fruits and vegetables grown in Medfly-free counties outside the counties quarantined by the USDA. Under said certification requirement, shipments of California fruits and vegetables from Medfly-free counties may not enter or be transported through South Carolina unless accompanied by a certificate of origin issued by CDFA. Such

certificate must state that the county of origin is Medfly-free and may be issued only when Jackson or Steiner Medfly traps have been placed throughout the county of origin at a density of five traps per square-mile and baited with Tri-Med lure. Finally, in the alternative to such certification, the South Carolina quarantine requires that California fruits and vegetables from outside the areas quarantined by the USDA be fumigated and/or placed into cold storage.

30. By imposing the above described requirements not found in the USDA or CDFA quarantines, the South Carolina quarantine imposes a de facto embargo on all California fruits and vegetables at precisely the peak shipping season. California currently maintains Steiner and other proven Medfly traps at a

density of five traps per square mile in urban areas outside the area covered by the federal quarantine. Identical traps are currently maintained in Medfly-free rural areas at the rate of one per square mile. Because of the migratory patterns of the Medfly, the current trapping grid is sufficient to detect movement of the Medfly outside of the USDA quarantine area. California does not presenty possess sufficient Jackson or Steiner traps to comply with the trap density requirements imposed by the South Carolina quarantine. Said quarantine would require the placement of more than 800,000 traps in areas as far as 500 miles from the closest Medfly or larval find at a cost of more than 100 million dollars. It is unlikely the task could ever be accomplished.

The effect of the South

Carolina quarantine is thus to embargo California fruits and vegetables that would otherwise be shipped into or through South Carolina from Medfly-free counties. Although California maintains traps in adequate numbers to determine whether the Medfly is moving outside of the quarantine area established by USDA and CDFA, and although those traps have shown no such movement, the South Carolina quarantine nonetheless subjects such fruit and vegetables to a certification requirement than cannot possibly be met in time to permit interstate shipments during the present shipping season. Because said certification requirements cannot be met, such fruits and vegetables will be subjected under the South Carolina order to fumigation and/or cold storage requirements. Even if sufficient

fumigation and/or cold storage facilities were available, such requirements would be unnecessary, dangerous and damaging to shipments of California crops. California is informed and believes, however, that neither South Carolina nor California, separately or together, possess sufficient fumigation and/or cold storage facilities to process the volume of fruits and vegetables that would otherwise be shipped from California to South Carolina.

PREEMPTION

31. Under the Federal Plant Quarantine Act, 7 U.S.C. §§ 150-167, and the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj, the quarantine established by the USDA preempts the quarantines established by Texas, Florida, Alabama, Mississippi and South Carolina. Those quarantine programs are therefore invalid to the extent that they prohibit or restrict

the movement in interstate commerce of fruits and vegetables grown outside the infested areas of California.

BURDEN ON INTERSTATE COMMERCE

32. The quarantine programs of Texas, Florida, Alabama, Mississippi and South Carolina impose an unreasonable burden on interstate commerce, and thus are in violation of Article I, § 8, Clause 3 of the U.S. Constitution. The said quarantine programs unreasonably restrict the free flow of fruits and vegetables from California that originate in areas beyond the quarantine areas established by California and the United States. There is no evidence of any kind that fruits and vegetables grown beyond the quarantine areas established by California and the United States have been infested, or are in danger of being infested, by the Medfly. Further, fruits and vegetables grown in the area

quarantined by California and the United States comprise only about 1 per cent of California's total production of fruits and vegetables. Therefore, the said state quarantines effectively restrict the movement in interstate commerce of the remaining 99% of California's production of fruits and vegetables, even though said fruits and vegetables are grown beyond the infested area and even though the United States and California are currently restricting the movement of fruits and vegetables grown in the areas of infestation. The quarantines established by California and the United States are sufficient to prevent the spread of the Medfly, and thus to protect the interests of the defendant states and other states which receive shipments of products from California. For these reasons, the quarantines established by

the defendant states are unnecessary to protect legitimate health, welfare and safety concerns of those states.

33. The quarantine programs established by the defendant states also impose an unreasonable burden on interstate commerce in that they unnecessarily burden California's agricultural industry, which industry is a major factor in California's economy. Agriculture is the largest industry of the State of California, generating total cash receipts in 1979 of $12.1 billion. Fruits and vegetables comprise a significant part of California's agricultural economy, generating total cash receipts in 1979 of $5 billion. About 75-80% of fruits and vegetables grown in California are exported in interstate or international commerce. Therefore, the defendants' quarantines result

in a severe burden upon California's agricultural economy. For this reason, the defendants' quarantines have, and will continue to have, a significant adverse effect upon California's agricultural industry, and upon California's economy.

34. The defendants' quarantine programs, in requiring certification and/or fumigation of fruits and vegetables grown outside the quarantine areas established under the California and federal quarantine programs, will have an unnecessarily burdensome effect upon California's agricultural industry. California does not have the capability of meeting the certification requirements imposed by defendants' quarantines. Further, the fumigation requirements imposed by defendants' quarantines will increase the time within which California

fruits and vegetables can be placed in interstate commerce, thus shortening their shelf-lives; it will also result in a needless destruction of large amounts of produce as a result of chemical reaction or increased ripening. Defendants' quarantine programs will thus needlessly decrease the quantity and quality of California produce in interstate commerce thereby imposing a burden upon California's agricultural industry as well as consumers desiring California's produce.

35. For the above reasons, there exists a justiciable case and controversy between the State of California and the defendant states.

PRAYER

WHEREFORE, the State of California prays for relief as follows:

(1) For an order granting the State of California leave to file its Complaint

for Injunctive and Declaratory Relief herein;

(2) For a preliminary and permanent injunction restraining the states of Texas, Florida, Alabama, Mississippi and South Carolina, and their officials, agents, and employees, from prohibiting or restricting the movement in interstate commerce, and into and through those states, of fruits and vegetables that are grown in California beyond the boundaries of the quarantine programs established by California and the United States to control the infestation of the Mediterranean fruit fly in certain areas of the State of California;

(3) For a declaratory judgment that the quarantine programs established by the States of Texas, Florida, Alabama, Mississippi and South Carolina

prohibiting and restricting the movement in interstate commerce of fruits and vegetables grown beyond the quarantine areas established by California and the United States, are in violation of the U.S. Constitution, Article I, Section 8, Clause 3, in that they place an unreasonable burden on interstate commerce, and further that said quarantine programs are invalid in that they have been preempted by the congressional enactment of the Federal Plant Quarantine Act, 7 U.S.C. §§ 1512-167; and the Federal Plant Pest Act, 7 U.S.C. §§ 150aa - 150jj.

(4) For a temporary restraining order prohibiting the States of Texas, Alabama, Mississippi and South Carolina and their officials, agents, and employees from preventing or restricting the movement in interstate commerce, and into and through those states, of fruits and vegetables that are grown in California

outside the boundaries of the quarantine programs established by California and the United States, which temporary restraining order is to remain in effect until the Court acts on the motion for preliminary injunction submitted by plaintiff State of California herein;

(5) For plaintiff's costs of suit herein; and

(6) For such other relief as may be proper.

Respectfully submitted,

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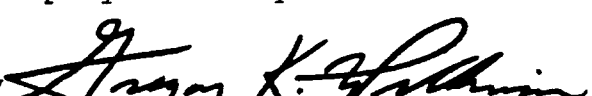
By 
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No. _____, Original

SUPREME COURT OF THE UNITED STATES

October Term, 1980

STATE OF CALIFORNIA,
Plaintiff,

vs.

STATES OF TEXAS, FLORIDA, ALABAMA, MISSISSIPPI and SOUTH CAROLINA,
Defendants.

BRIEF IN SUPPORT OF (1) MOTION FOR LEAVE TO FILE COMPLAINT, (2) APPLICATION FOR TEMPORARY RESTRAINING ORDER AND (3) MOTION FOR PRELIMINARY INJUNCTION

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QUESTIONS PRESENTED

(1) Should the Court grant California leave to file its complaint under the Court's original jurisdiction?

(2) Should the Court grant California's application for temporary restraining order and motion for preliminary injunction?

The merits of the case raise the following additional questions:

(1) Are the defendant states preempted from restricting the movement in interstate commerce of fruits and vegetables grown in California, by virtue of the fact that the U.S. Department of Agriculture has adopted a quarantine program restricting movement of such products under authority of the Federal Plant Quarantine Act, 7 U.S.C. §§ 151-167 and the Federal Plant Pest Act, 7 U.S.C. §§ 150aa - 150jj.

(2) Do the quarantines established

by the defendant states, in restricting the movement in interstate commerce of fruits and vegetables grown in California, impose an unreasonable burden on interstate commerce in violation of Article I, Section 8, Clause 3 of the U.S. Constitution?

PARTIES

The plaintiff is the State of California. The defendants are the states of Texas, Florida, Alabama, Mississippi and South Carolina.

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TITLE III

JURISDICTION

This Court has original and exclusive jurisdiction of this case under Article III, Section 2, Clause 2 of the U.S. Constitution, and under 28 U.S.C. § 1251 (a)(1).

FEDERAL LAWS INVOLVED

This case involves an interpretation of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj, and the Federal Plant Quarantine Act, 7 U.S.C. §§ 151-167, and particularly section 8 of the latter Act, 7 U.S.C. § 161. A copy of section 8 appears in an appendix attached hereto.

STATEMENT OF THE CASE

1. Nature of the Controversy

This is an action by the State of California against the states of Texas, Florida, Alabama, Mississippi and South Carolina arising out of quarantine programs established by the defendant

States to restrict the importation into those states of certain fruits and vegetables grown in California.

In or around June 1980, California discovered that the Mediterranean fruit fly (Medfly) had infested parts of Santa Clara and Alameda Counties in California. The Medfly poses a serious threat to California's agricultural economy, which is the State's major industry. See Declaration of Richard E. Rominger Ex. A at p 2.

The United States and California have adopted, and are vigorously enforcing a program to quarantine the Medfly.1/

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1. The California quarantine program was promulgated as part of the California Adminitrative Code, Title 3, § 3406. An eradication program was promulgated as part of the same code, at Title 3, § 3591.5. Copies of these regulations were attached as subexhibit A-2 to the Affidavit of Richard E. Rominger, submitted in connection with State of California v. State of Texas, No. 8.6 Original, filed on or about February 24, 1981.

Under this program, any fruit or vegetable grown in the Counties of Santa Clara, Alameda or San Mateo, which serves as a host to the Medfly cannot be exported outside the infestation area, until the product has been treated by fumigation or cold storage. Dec. of Jerry Scribner Ex. B at p. 2. The quarantine area includes not only a 180-square-mile eradication area, but also a much larger buffer zone; the total quarantine area comprises approximately 2200 square miles. Id. at 3.

California has undertaken a vigorous program to eradicate the Medfly from the three infested counties. On December 24, 1980, Governor Edmund G. Brown, Jr., declared a state of emergency. Pursuant to the Governor's emergency proclamation and subsequent orders, an extensive eradication program has been and is being carried out by personnel from several

State and county agencies. Commencing in December, 1980, more than a thousand members of the California Conservation Corps stripped host fruit from trees within the core area in Santa Clara County. Id. at 4. More than 2,000 tons of fruit were collected through that stripping program. Additionally, commencing in December, 1980, Malathion bait spray was applied to all host foliage within the core area. Further, insecticides were sprayed on the ground as a soil drench to kill larvae entering the soil and flies emerging from the pupae. Id. at pp. 4-5.

On or about July 10, 1981, after significant larval finds were made outside of the existing core area of infestation, but within the buffer zone, the Governor of California ordered the immediate aerial application of Malathion

bait spray to commence on July 13, 1981. Id. at pp. 7-8. Pursuant to that order, personnel, equipment and materials were obtained by the State of California, and the aerial application of Malathion, by helicopter, commenced on schedule. The aerial spraying program conducted pursuant to Governor Brown's order is continuing at this time. Id. at p. 8. In addition, pursuant to orders issued by the Governor, residents within the three affected counties are engaged in a fruit stripping program that is being enforced by means of fines and penalties. To date, no fertile flies or larval finds have been made outside of the areas quarantined by the State of California. Id.; Affidavit of Roy T. Cunningham, Exhibit M at p. 1.

The U.S. Department of Agriculture

(USDA) established its own quarantine program on July 25, 1980, under authority of the Federal Plant Pest Act, 7 U.S.C. §§ 150aa-150jj. See 45 Fed. Reg. 50318-50324 (July 29, 1980). More recently, the federal quarantine area has been expanded by the USDA under authority of the Plant Quarantine Act, 7 U.S.C. §§ 151-167. See 46 Fed. Reg. 36148 (July 14, 1981).2/ The quarantine area established under the USDA program is identical to that established under California's own quarantine. Declaration of Howard Ingham, Ex. C passim; Declaration of Richard E. Rominger, Ex. A at p. 4. The federal program includes the Counties of Santa Clara, Alameda and San Mateo; however, like the California program, it does not extend beyond the

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2. A copy of the USDA regulations establishing the current Federal Medfly Quarantine is attached as subexhibit 1 to the Affidavit of Miriam Bender, submitted herewith as exhibit N.

boundaries of those counties. Dec. of Howard R. Ingham, Ex. C. Under the USDA quarantine, certain fruits and vegetables from the three affected counties cannot be moved in interstate commerce without a permit or certificate from the USDA. Id. at pp 3-4; See sub-exhibit 1 to Dec. of Miriam Bender, Ex. N. Such a permit or certificate is issued only if the product has been treated by fumigation or cold storage. Declaration of Jerry Scribner, Ex. B at p. 2.
The USDA quarantine does not attempt to impose restrictions upon fruit or vegetables grown in California outside the three affected counties.

On or about July 14, 1981, the States of Texas, Florida, Alabama, Mississippi, and South Carolina through their agricultural commissioners or departments, imposed their own quarantines against California fruits and

vegetables. 3/ Unlike the quarantines adopted by the United States and California, the quarantines adopted by the defendant states are directed at fruits and vegetables grown anywhere in the State of California and thus effectively establish a larger quarantine area than that established under the quarantines of the United States and California. They effectively restrict the movement of certain products that are unrestricted by the federal and California programs.

Specifically, the quarantines adopted by the defendant states require that fruits and vegetables from non-infested

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3. True and correct copies of the quarantines adopted by the States of Texas and Florida are attached as subexhibits 1 and 2 to the declaration of Richard E. Rominger, submitted herewith as exhibit A. The substance of the quarantines of Alabama, Mississippi and South Carolina is set forth at pp 2-3 of his declaration.

California counties be certified as having been grown in a Medfly-free area. They further prohibit such certification unless California or county officials have maintained specified Medfly traps equipped with specific Medfly lure at a density of 5 traps per square mile. In the case of Texas, those traps must have been operated and maintained for a period of 30 days. If the quarantines are read to require Medfly traps at a density of 5 per square-mile throughout all of California, compliance would be unfeasible. See Declaration of Robert C. Roberson Ex. G at pp 4-5. More than 800,000 traps would be required at a total cost of more than $100 million. Id. at 3. If the quarantines are read to require traps at a density of 5 per square mile only in urban and host crop areas, an additional 30,000 traps would

be required at a cost of approximately $5 million. More importantly, it could require 3-4 weeks to fully deploy them. Added to the 30 day requirement imposed by Texas, California crops could not be certified for shipment until the middle of September, 1981 -- well after the harvest of many crops is finished. Id. at pp 3-4. Consequently, the effect of defendants' quarantine orders is to immediately prohibit or restrict the interstate movement of fruits and vegetables that are permitted to move without restriction in interstate commerce under quarantine orders adopted by the federal government and the State of California.

2. Nature of Relief Sought

In this action, California attempts to prohibit the defendant states from restricting the movement in interstate

commerce of fruits and vegetables grown outside the quarantine areas established by California and the United States. California argues that the defendants' quarantines are unlawful because (1), under the Federal Plant Quarantine Act, and Federal Plant Pest Act, the quarantine adopted by the USDA preempts that adopted by the defendant states, and (2) the defendants' quarantines place an unreasonable burden on interstate commerce in violation of the Commerce Clause in Article I, Section 8, Clause of the U.S. Constitution.

California thus moves that this Court grant leave for California to file its complaint under this Court's original jurisdiction. California also moves for a preliminary injunction, restricting the defendant states from enforcing their quarantines during the pendency of this litigation. Finally, California applies for a temporary restraining order,

restraining the defendants from enforcing their quarantines until this Court acts on our motion for preliminary injunction. This brief serves as the supporting document in support of all three applications and motions.

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SUMMARY OF ARGUMENT

I

The Court should grant California leave to file its complaint under this Court's original jurisdiction because (1) the defendant states' quarantine programs conflict with those of California and (2) they will have a substantial, adverse impact upon California's agricultural economy, which is linked to the State's economic health. Thus, an actual controversy exists between California and the defendant states. Further California has an independent interest in limiting the scope of the preemption doctrine.

II

The Court should grant California's application for interim relief, since (1) there is a substantial likelihood that California will prevail on the merits

and (2) the balance of relative harm weighs heavily in favor of California rather than the defendant states.

(a) There is a likelihood that California will prevail on the merits because Congress, by enactment of the Federal Plant Pest Act and Plant Quarantine Act has preempted state quarantines in instances where the Secretary of Agriculture has adopted his own quarantine. Further, the defendants' quarantine place an unreasonable burden on interstate commerce, in that (1) the quarantines are not necessary to protect derendants concerns for public health, welfare and safety, in light of the existing quarantines and monitoring programs established by California and the United States and, (2) the defendants' quarantines place an unreasonable burden on California's

economy, and particularly on its agricultural industry.

(b) For many of the same reasons described in II(a) above, the balance of harm weighs heavily in favor of California rather than defendant states. Since California and the United States have established quarantines that restrict the movement of host fruits and vegetables from areas within or adjacent to the infested area, and since there is no evidence that any infestation has occurred in other areas of California, the defendant states' quarantines are unnecessary to protect defendants' interests. Moreover, as explained above, the defendants' quarantines impose a severe hardship on the California agricultural industry, which is the State's largest industry and the largest such industry in the nation.

ARGUMENT

I. THE COURT SHOULD GRANT LEAVE TO FILE COMPLAINT.

A. This Court Has Original Jurisdiction Where A State Is Acting To Protect Its Own Sovereign Interests.

Under the U.S. Constitution, this court has orginial jurisdiction in "all cases . . . in which a state shall be a party, . . ." U.S. Const., Art. III, §2, Cl. 2. Congress has enacted legislation providing that this Court shall have "original and exclusive jurisdiction" in "all controversies between two or more States. . . ." 28 U.S.C. § 1251(a)(1). Since this is an action between states, the Court's jurisdiction is both original and exclusive.

This Court has declined to exercise its original jurisdiction in actions between states, however, if it

appears that the plaintiff state is attempting to protect purely private interests rather than its own sovereign interests. See, e.g., Pennsylvania v. New Jersey, 426 U.S. 660 (1976); Alabama v. Arizona, 291 U.S. 286 (1934). In such cases, the private parties that are the beneficiaries of the action have an alternative remedy in an action brought in federal district court. Therefore, the Court has held in such cases that the state is not properly acting in a parens patriae capacity on behalf of its citizens.

This Court has had no difficulty, however, in concluding that a state is acting on behalf of its own legitimate interests in certain types of actions, and thus that a state has standing to maintain such actions in this Court. Such actions, for example, include

boundary disputes, [4] diversions of water from interstate streams, [5] interstate air pollution, [6] and interstate water pollution.[7] We frankly concede, however, that the Court has been more hesitant to exercise its original jurisdiction in cases, as here, involving economic injury. In such cases, the Court appears to require that the injury be of a sufficiently serious magnitude to warrant the conclusion that the state itself suffers the injury, and that the injury is not confined to private citizens of the state.

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4. See, e.g., Rhode Island v. Massachusetts, 12 Pet. (37 U.S. 657 (188).

5. See, e.g., Kansas v. Colorado, 206 U.S. 46 (1907).

6. See, e.g., Georgia v. Tennessee Copper Co., 206 U.S. 230 (1907).

7. See, e.g., New York v. New Jersey, 256 U.S. 296 (1921).

For example, in Georgia v. Pennsylvania, 324 U.S. 429 (1945), Georgia brought an action against Pennsylvania, claiming that a conspiracy in violation of the federal antitrust laws effectively resulted in discriminatory freight rates that impeded the growth of the State's economy. The Court upheld Georgia's standing to maintain the suit under the Court's original jurisdiction, stating:

> "The rights which Georgia asserts, parens patriae, are those arising from an alleged conspiracy of private persons whose price-fixing scheme, it is said, has injured the economy of Georgia." 324 U.S. at 44.

Later, the Court stated:

> "This is not a suit in which a State is a mere nominal plaintiff, individual shippers being the real complainants. This is a suit in which Georgia asserts claims arising out of federal laws and the gravamen of which runs far beyond the claim of damage to individual shippers." Id. at 452.

Thus, the Court indicated that, largely because of the magnitude of the injury to

Georgia's economy, Georgia had standing to maintain its action in the Supreme Court.

Similarly, in Pennsylvania v. West Virginia, 262 U.S. 553 (1923), the Court held that two plaintiff states had standing to challenge legislation adopted by West Virginia which required natural gas producers of the latter state to give preferential treatment to consumers of the later state. The Court stated that the plaintiff states had standing to maintain their action because of the magnitude of the threatened injury upon the economic interests of both states. The Court stated:

> "The attitude of the complainant States is not that of mere volunteers attempting to vindicate the freedom of interstate commerce or to redress purely private grievances. Each sues to protect a two-fold interest -- one as the proprietor of various public institutions and schools whose supply of gas will be largely curtailed or cut off by the threatened interferences with the interstate current, and the other as the representative of the consuming public

whose supply will be siilarly affected. Both interests are substantial and both are threatened with serious injury." 262 U.S. at 591, 592.

On the other hand, in Pennsylvania v. New Jersey, 426 U.S. 660 (1976), the Court declined to exercise its original jurisdiction to hear an action brought by a plaintiff state that sought to recover taxes withheld from its own private parties. The Court stated that the state's own sovereign interests were unaffected by the action, and that the state was merely acting on behalf of several of its private citizens.[8/]

B. California Is Protecting Its Own Sovereign Interests And The Economic Health Of The State As A Whole.

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8. Similarly, in Louisiana v. Texas, 176 U.S. 1 (1900), the Court declined to hear an action in which Louisiana alleged that Texas had placed on unlawful embargo on commerce originating in Louisiana, an embargo that Texas sought to justify on grounds that products in Louisiana had been contaminated by a yellow fever epidemic. The Court stated:

In the present case, the State of California has a sovereign interest, apart from the interests of its agricultural industry, in the economic health of the state and vitality of its agricultural industry. As the affidavits supplied under separate cover make clear, the agricultural industry is the largest industry in the state of California, and further is the largest agricultural industry of any state

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fn. 8 (cont'd)

"But in order that a controversy between states, justiciable in this court, can be held to exist, something more must be put forward than that the citizens of one state are injured by the maladministration of the laws of another." 176 U.S. AT 22.

Thus, the Court stated that Louisiana, in order to obtain standing, must allege and show that its own sovereign or economic interests are injured, not simply that private citizens of the State are injured. The decision is thus inapposite here for the reason that, as we express more full below, California has alleged in its complaint, nd shown in its affidavits, that the defendants' quarantines have a substantial effect on California's economy.

in the nation. It generated total revenues in 1979 of approximately $12.1 billion, of which $5 billion was generated by the fruits and vegetables industry. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2, and also Subexhibit A-1 attached thereto, at p. 2. Approximately 75-80% of fruits and vegetables grown in California are exported in interstate commerce. See Affidavit of Scott D. Morse, Exhibit I, at p. 1.

It is generally estimated that one out of three jobs in California is related, directly or indirectly, to the agricultural industry. See Affidavit of Marvis H. Hurst, attached to the Declaration of Charles W. Getz IV, Exhibit L. Therefore, any condition that adversely affects California's agricultural industry also has an adverse effect on employment in

California, which in turn has an effect on the collection and distribution of the State's tax revenues. Additionally, the diminution of income received by the California agricultural industry will, in itself, directly result in reduced tax revenues that are available for collection by the State, which in turn will result in higher tax burdens for the State's taxpayers. Therefore, California has an interest in maintaining this action, apart from the interest of its agricultural industry.

C. A Conflict Exists Between California And The Defendant States' Quarantine Programs.

In addition to its adverse effect on California's agriculture industry, the quarantines imposed by the defendant states are in conflict with the California quarantine, and also with the quarantine adopted by the U. S. Department of Agriculture (USDA).

Thus, this case presents a conflict between state regulatory schemes relating to the same subject matter, and also a conflict between a regulatory scheme adopted by the defendant states and a federal regulatory scheme. Because of the nature of this conflict, California has an interest in this case apart from the interest of its agricultural industry, and thus has standing to maintain its action.

California has adopted a quarantine and eradication program relating to the Medfly infestation in California, which program applies only to three counties in California. Under the California program, no fruits or vegetables can be shipped out of the quarantine area unless they have been treated by fumigation and cold storage. See Declaration of Howard R. Ingham Exhibit C, at pp. 3-4.

In addition, California is carefully monitoring the presence of the Medfly both in the infested area and in other areas of the state. Within the infested area itself, traps have been placed at a density of up to 25 per square mile. In urban areas of the state outside of the CDFA quarantined area, traps have been placed at a rate of five per square mile. In rural residential and host areas outside of the CDFA quarantined areas, traps have been placed at the rate of one every square mile. A total of 30,000 Jackson type traps are presently in use. See Affidavit of Robert Roberson, Exhibit G. Further, residents in the infested area and the buffer zone have been instructed to inspect fruit for larvae as it is stripped from trees, stripped fruit is later inspected, and fruit which is seized at inspection

points is checked for larvae. See declaration Jerry Scribner, Exhibit B, at p. B. Through these means CDFA officials have concentrated presently scarce resources and are able to detect spread of the Medfly into areas adjoining the infested areas. As new larval finds are made, both the core area and the buffer zones are expanded, and control methods are applied to a widened area. See Affidavit of Howard R. Ingham, Exhibit C, at p. 4.

Finally, California has agreed with USDA to embark on an expanded monitoring program as it becomes feasible to do so. This will entail traps at a density of 50 per square mile in the core (sprayed) area and a four mile radius buffer zone, traps at a density of 10 to 25 per square mile elsewhere in the quarantine zone and traps at a density of five per square mile

in all urban and host fruit areas throughout the remainder of the state, a total of 60,000 traps. This program will be in place in approximately three to four weeks. See Declaration of Robert Roberson, Exhibit G, at p. 3.

On the basis of this monitoring and treatment program, California authorities have determined that no restrictions are necessary with respect to fruits and vegetables grown outside the CDFA and USDA quarantine area. Such fruits and vegetables are free to move in commerce regardless of whether they have been treated.

On the other hand, the defendant states' quarantine amounts to a de facto quarantine of the entire state of California. The defendant states prohibit the shipment of fruits and vegetables grown anywhere in California unless they have been treated

by fumigation or cold storage or have been certified as originating in a fly-free area. "Fly-free" is defined as one in which traps set at a density of five per square mile. Texas imposes the additional requirement that the traps must have been in operation for a period of 30 days. See Declaration of Richard A. Rominger, Exhibit A at p. 3. This requirement is inconsistent with the monitoring program set up by California and detailed above. Further, it is not possible for the state to put such a monitoring program in effect immediately. See Declaration of Robert Roberson, Exhibit G, at p. 3.

Thus the quarantine imposed by the defendant states will effectively quarantine all host fruits and vegetables grown in California for at least a period of 60 days. (Id.) Thus, a direct conflict

exists between the regulatory schemes of California and the defendant states.

The latter have determined that all areas in California must be placed under quarantine, and California, as well as the USDA, have determined that only the actual area of infestation should be placed under quarantine. Defendants thus inhibit commerce that California authorizes.

The conflict between the two regulatory schemes is enhanced by the actual marketing practices of the fruits and vegetables industry. Because of these practices, many growers in California will be required to treat their products as required by the defendant states' quarantine, even though the products will not be sold or consumed in those states. Specifically, if fruits and

vegetables are treated as required by the defendant states' quarantine, the treatment will normally occur before the products are shipped in interstate commerce. See Supplemental Affidavit of Howard R. Ingham, Exhibit M, at p. 5. [9/] A substantial portion of such products, however, is shipped in interstate commerce without the actual destination of the products being known. See Affidavit of Marvis H. Hurst, pp. 2-3. The broker often determines the ultimate point of shipment--depending on factors relating to price, space and availability in particular

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9. The original Supplemental Affidavit of Howard R. Ingham and original Affidavit of Marvis H. Hurst were submitted under separate cover to this Court in No. 87, original by the State of California. Copies are attached to the Declaration of Charles W. Getz IV, filed herewitn. These are hereinafter referred to as "Supplemental Affidavit of Howard R. Ingham" and "Affidavit of Marvis H. Hurst".

markets--only after the shipment is underway. Id. Moreover, even after a shipment has arrived at a particular destination--such as Texas--and been placed in a warehouse, a broker often determines that the shipment should be sent to another state because of current marketing factors. Id. at p. 3. [10/] In short, products shipped to Florida might be re-routed to Texas in transit, or vice versa; moreover, products shipped to Texas might be re-routed to other markets after they have arrived in Texas. Thus, the marketing of fruits and vegetables in national markets is highly flexible and pragmatic, owing to

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10. Thus, although Texas has appar-ently conceded that its quarantine will not apply to shipments of products through Texas, it is often not known whether a shipment will be through Texas until after it has already arrived at a Texas warehouse.

the perishability of such products and the volatile nature of their prices. For these reasons, the ultimate destination of such products can often not be determined until after they have been placed in interstate commerce.

Because of this marketing practice, for example, a grower of citrus fruits in Fresno, which is located far from the Medfly infestation, will be required under the Texas quarantine to fumigate his products before they leave California, even though the fruits may be eventually sold in Louisiana, Maryland or Georgia. California has determined, under its quarantine program, that the Fresno grower need not fumigate his fruit under these circumstances. The defendant states, on the other hand, have made the opposite determination. Thus, the grower will likely be required to follow,

for example, the Texas quarantine because of the possibility that this shipment may terminate in Texas, even though it is subsequently determined that the shipment should terminate at another destination.[11/]

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11. This Court recognized the importance of a similar marketing situa-tion in Jones v. Rath Packing Co., 430 U.S. 519 (1977). There, California imposed weight restrictions on the sale of flour that excluded consideration of weight reduction caused by loss of moisture. This Court concluded that the California law would require a "miller with a national marketing area" to "overpack" in order to meet the California standard. 430 U.S. at 540-541, 542-543. Accordingly, it was held that the California law posed an obstacle to the congressional objectives underlying the Fair Packaging and Label-ing Act, 15 U.S.C. §§1451-1461, and hence was invalid. Id. Similarly, as explained above, a California grower who distributes his products in national markets may be required to meet the requirements of the Texas quarantine even though his products may be sold and consumed in other states. The Texas quarantine thus imposes an unreasonable burden on interstate commerce and, more importantly here, impairs the interests which California is attempting to protect by limiting the scope of its own quarantine.

The interests which California is seeking to protect, in limiting the scope of its quarantine, are thus impaired by the defendant states' quarantines.

It is thus clear that there is an irreconcilable clash between the California and defendant states' quarantines, in that they impose conflicting standards and requirements on the same grower with respect to the same crop. Because of this conflict, California has its own direct interest in this case, apart from the interest of its agricultural industry. Therefore, California has standing to maintain its action against the defendant states.

D. Effect Of Preemption Doctrine on California's Own Quarantines.

We have argued that the defendant states' quarantines are preempted by federal law. California has adopted

several other quarantines with respect to other agricultural products, unrelated to the quarantine imposed as a result of the Medfly infestation. See Supplemental Affidavit of Howard R. Ingham, at pp. 2-4.[12/] Of the latter quarantines, some apply to products that are separately governed by federal quarantines, and some do not; of the quarantines separately governed by federal quarantines, we believe that the California quarantines are entirely harmonious with the federal quarantines. Id.

Therefore, California has a dual interest with respect to the preemption issue raised here. On the one hand, we believe that the defendant states' quarantines are preempted by federal law. On the

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12. These quarantines relate to such matters as the Japanese beetle, Dutch elm disease, gypsy moth, pink bollworm, and related pests. Id.

other hand, we believe that our own Medfly quarantine, as well as other quarantines applicable to other types of agricultural products, are not preempted by federal law.[13/] Thus, California has an interest in having the preemption doctrine applied in this case, but in not having it applied so broadly that it will invalidate California's own quarantines.

The California agricultural industry, on the other hand, does not have the same interest that California has in limiting the scope of the preemption

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13. Under our view, the preemption doctrine, as applied here, does not pro-hibit a state from imposing a quarantine on intrastate commerce, or from imposing a quarantine on interstate commerce to the extent that the quarantine is consistent--both in the areas quarantined and the restrictions applied--with the federal quarantine. Accordingly, under our view, California's quarantine in this case--as it applies both to intrastate and interstate commerce--is not preempted by federal law, and the defendant states' quarantines are so preempted.

doctrine in this case. The industry has an interest in having the preemption doctrine applied here, but not, at least to the same extent as California, in limiting the scope of the preemption doctrine to insure that California's own quarantines will not be jeopardized. Many of California's quarantines were adopted as an exercise of the State's police power, in order to protect the public health, welfare or safety. It is doubtful that the California agricultural industry has the same interest as California in protecting the public concerns that underlie these other quarantines. For this additional reason, California has an interest in this case apart from the interest of its agricultural industry.

E. Pendency of Private Action.

In addition to the present action commenced by the State of California, a

segment of the California agricultural industry--consisting of a group of fruit growers--has filed a separate action in the district court for the Northern District of Texas to restrain enforcement of the Texas quarantine, entitled California Grape and Tree Fruit League, et al. v. Reagan V. Brown, Commissioner of the Texas Department of Agriculture. Although we have not seen a copy of the pleadings in that case, we understand that it will raise both the preemption issue and the interstate commerce issue raised herein. In order to safeguard California's sovereign interests, we have filed a brief amicus curiae in that action. However, the Texas lawsuit does not provide a proper basis for denying our motion for leave to file this brief.

This Court's jurisdiction of our action is both "original" and "exclusive."

28 U.S.C. 1251(a)(1). Therefore, it is doubtful that the Court should decline to hear our lawsuit because of the pendency of another lawsuit brought by an aggrieved private party. As noted in this brief, this Court has some latitude in determining whether California is acting in a proper parens patriae capacity in this case, and thus whether the Court should entertain our action on this ground. Assuming, however, that California is acting in such a capacity, it would not be proper to deny California the opportunity to present its case because the same issues are raised in a private lawsuit. Otherwise, California would be unable to have its case heard in any forum, since this Court's jurisdiction is "exclusive."

In any event, the private group which initiated the Texas lawsuit cannot

adequately represent the interests of the State of California herein, for several reasons.

First, as noted above, California has an interest apart from the interest of the California agricultural industry, in preserving the integrity of its own quarantine program.

Second, as noted above, California has an interest, apart from the interest of the California agricultural industry, in limiting the scope of the preemption doctrine, because California has several other quarantines that may be jeopardized by an unduly generous interpretation of the preemption doctrine in this case.

Third, the fruit growers who initiated the Texas action represent only a part of the California agricultural industry affected by the

Texas quarantine. The Texas quarantine applies to more than 31 specified varieties of fruits and vegetables. See Affidavit of Richard E. Rominger, Exhibit A-5. It is questionable whether the fruit growers will be able to sufficiently establish the widespread burden on interstate commerce that underlies our case. It is even more doubtful that they will be able to establish the widespread irreparable harm that underlies our motion for preliminary injunction. A court might well conclude that Texas' interests outweigh the limited harm sustained by the fruit growers, but that Texas' interests do not similarly outweigh the broad interests California is seeking to protect in this case.

Finally the case commenced in the Texas district court involves only one defendant state--Texas. California, however,

objects to the quarantines imposed by five states, including Texas. Thus, even if the plaintiffs in the Texas suit are successful in overturning the Texas quarantine, four additional quarantines will remain in effect. Only through a series of expensive and time consuming multiple actions brought in each of the defendant states could those quarantines be challenged. This Court, on the other hand, provides the jurisdiction necessary to reach all of the objectionable quarantines in one action. Accordingly, for the additional reason of avoiding a multiplicity of actions, this Court should permit California to maintain this action against the defendant states.

It is thus respectfully submitted that an independently acting branch of the California agricultural industry should not be able, by filing its own lawsuit,

to defeat California's right to protect the broad interests involved here, notwithstanding California's limited participation in that action. Indeed, every action involving two states under this Court's original and exclusive jurisdiction affects private interests in some way, and the Court should not decline to exercise its original jurisdiction because of the happenstance that one of the aggrieved private parties initiates his own lawsuit.

II. THE COURT SHOULD GRANT CALIFORNIA's APPLICATION FOR TEMPORARY RESTRAINING ORDER AND MOTION FOR PRELIMINARY INJUNCTION.

The federal courts, in determining whether to grant interim relief, examine the likelihood that the plaintiff will eventually prevail on the merits, the potential harm that will be sustained by the plaintiff if the court fails to grant such relief, and the potential harm that will be sustained by the defendant if the court grants such relief. As the Second Circuit recently stated:

> "One moving for a preliminary injunction assumes the burden of demonstrating either a combination of probable success and the possibility of irreparable injury or that serious questions are raised and the balance of hardships tip sharply in his favor." Charlie's Girls, Inc. v. Revlon, 484 F.2d 953, 954 (2d Cir. 1973). See also William Inglis & Sons Baking Co. v. ITT Continental Baking Co., Inc., 526 F.2d 86, 88 (9th Cir. 1976).

As we explain below, there is a substantial likelihood that California will prevail on

the merits in this action, and the balance of relative harm weighs heavily in favor of California.

A. There Is A Substantial Likelihood That California Will Prevail On The Merits.

1. The Defendant States' Quarantines Have Been Preempted By The Quarantine Established By The U. S. Department of Agriculture

Under the preemption doctrine, a state law is invalid under the preemption doctrine if (1) Congress has "occupied the field" that is the subject of the state law [14/] or (2) the state law is in conflict

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14. In commenting on whether Congress has "occupied the field," this Court has stated:

> "The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. [Citations omitted.] Or an act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state

with a specific federal law. See, e.g., New York State Dept. of Social Services v. Dublino, 413 U. S. 405 (1973); Goldstein v. California, 412 U.S. 546 (1973); Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947); Huron Portland Cement Co. v. City of Detroit, 362 U.S. 440 (1960); Florida Lime and Avocado Growers v. Paul, 373 U. S. 132, 142 (1963). Thus, if Congress has not occupied the field, it must be determined whether there is a conflict between federal and state laws on the subject. If Congress has occupied the field, however, the state law is invalid regardless of whether it is consistent with the federal scheme.

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fn. 14 (cont.) laws on the same subject. [Citations omitted.] Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. [Citations omitted.]" Rice v. Santa Fe Elevator Corp., 331 U. S. 218, 230 (1947).

We recognize that the preemption doctrine should not be applied unless Congress manifests its intent with reasonable clarity. As this Court recently commented:

> "If Congress is authorized to act in a field, it should manifest its intention clearly. It will not be presumed that a federal statute was intended to supersede the exercise of the power of the state unless there is a clear manifestation of intention to do so. The exercise of federal supremacy is not lightly to be presumed." (Emphasis added.) New York State Dep. of Social Servcies v. Dublino 413 U.S. 405, 413 (1973). (Emphasis added.)

As we explain below, Congress has manifested its intent with reasonable clarity that it has occupied the field which the defendant states now seek to regulate.

In 1912, Congress enacted the Federal Plant Quarantine Act ("Quarantine Act"), 7 U.S.C. §§ 151-167, which regulates the importation of nursery stock. The Act makes it unlawful to import, or move in interstate commerce, any plant until a permit

has been issued by the Secretary of Agriculture. 7 U.S.C. § 154. Under section 8 of the Act, the Secretary is specifically authorized to adopt a quarantine with respect to any state or portion thereof when he determines that such a quarantine is necessary "to prevent the spread of dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States." Id. at § 161. If the Secretary has established such a quarantine, it is unlawful to move any article specified in the quarantine order from the quarantine area "in manner or method or under conditions other than those prescribed by the Secretary of Agriculture." Id.

In 1957, Congress enacted the Federal Plant Pest Act (Pest Act), 7 U.S.C. § 150aa-150jj. This Act makes it unlawful to

import, or move in interstate commerce, any plant pest without having obtained a permit from the Secretary of Agriculture. 7 U.S.C. § 150bb. The Act also provides that, as an emergency measure, the Secretary may quarantine or otherwise destroy any plant pest "new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. . . ." Id. at § 150dd(a). Thus, the Pest Act supplements the Quarantine Act, in that it enlarges and extends the regulatory program established under the Quarantine Act. Accordingly, the two acts must be read in pari materia. The major difference between the two acts is that under the Pest Act the Secretary of Agriculture may act more quickly than under the Quarantine Act. Compare 7 U.S.C. §§ 150dd with 161. The Quarantine Act requires notice and a hearing before imposition

of a quarantine, the Pest Act does not.

In Oregon-Washington R.R. and Nav. Co. v. Washington, 270 U.S. 87 (1926), this Court held that section 8 of the Quarantine Act effectively preempts state quarantine laws. In that case, Washington issued a quarantine order which restricted the shipment into Washington of hay and alfalfa products from certain designated states, in order to prevent the spread of the alfalfa weevil in Washington. This Court invalidated the Washington order on grounds that, even though the Secretary of Agriculture had not established a quarantine order under the Quarantine Act, Congress had occupied the field by passage of the Act. Accordingly, it was held that the State order was preempted by the federal statute. The Court stated:

> "It is suggested that the states may act in the absence of any action by the Secretary of Agriculture; that it is left to him to allow the states to

quarantine, and that if he does not act there is no invalidity in the state action. Such construction as that cannot be given to the Federal statute. The obligation to act without respect to the states is put directly upon the Secretary of Agriculture whenever quarantine in his judgment is necessary. When he does not act, it must be presumed that it is not necessary." 270 U.S. at 102-103.

Shortly thereafter, Congress amended section 8 of the Quarantine Act to restore part of the power which the states had lost. The amendment provides:

"That until the Secretary of Agriculture shall have made a determination that such a quarantine is necessary and has duly established the same with reference to any dangerous plant disease or insect infestation, as hereinabove provided, nothing in this chapter shall be construed to prevent any State, Territory, Insular Possession, or District from promulgating, enacting, and enforcing any quarantine, prohibiting or restricting the transportation of any class of nursery stock, plant, fruit, seed, or other product or article subject to the restrictions of this section, into or through such State, Territory, District, or portion thereof, from any other State,

> Territory, or District promulgating or enacting the same, that such dangerous plant disease or insect infestation exists in such other State, Territory, District or portion thereof." 7 U.S.C. § 161.

Thus, the amendment authorizes a state to adopt a quarantine when the Secretary has not adopted his own quarantine. Importantly, however, the amendment does not authorize a state to adopt a quarantine when the Secretary has adopted his own quarantine. In the latter situation, under this Court's decision in the Oregon-Washington case, the state is thus preempted from restricting the movement of plants in interstate commerce. Congress, in enacting the amendment, apparently perceived that the states should have the power to act in the face of secretarial inaction. Congress evidently believed, however, that, once the Secretary acts, the national interest requires that the Secretary's action supplant any action which

a state might take with respect to the same plant. In this situation, Congress embraced the prinicple of national uniformity, rather tnan state and local diversity.

In this case, the Secretary of Agriculture has adopted a quarantine with respect to the Medfly infestation in California. See 45 Fed. Reg. 50318-50324 (July 29, 1980). The quarantine was adopted pursuant to the Pest Act, which, as noted above, must be read in pari materia with the Plant Act, and with section 8 thereof. In addition, by the week of July 20, 1981 the USDA will have adopted a quarantine under the Plant Quarantine Act as well. As adopted, said quarantine will include only the counties of Santa Clara, Alameda and San Mateo. See Affidavit of Miriam Bender, Exhibit N; 46 Fed. Reg. 36148 (July 14, 1981).

Under the Secretary's quarantine, the Secretary has prohibited the movement in interstate commerce of fruits and vegetables grown in Santa Clara, Alameda and San Mateo Counties, unless such products have been treated by fumigation or cold storage. See 45 Fed.Reg. 50318-50324 (July 29, 1980). His program is thus substantially narrower than that of the defendant States, which would in effect restrict the movement of fruits and vegetables grown anywhere in California.

More importantly, however, the Secretary's action, in promulgating the quarantine, effectively occupies the field, according to this Court's decision in the Oregon-Washington case. Accordingly, his action preempts the defendant States' right to promulgate their own quarantine programs. Whatever their right to restrict

the shipment of products in the absence of secretarial action, the defendant States have lost that right now that the Secretary has acted.[15/]

Defendants may contend that such an interpretation of the Quarantine Act is overly broad. It may be argued that the Quarantine Act only preempts state action to the extent that the Secretary has imposed a quarantine over a particular area, leaving states free to impose a quarantine of produce from any area as to which the

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15. The Secretary's quarantine power applies only to interstate commerce, see 7 U.S.C. § 161, and thus does not prevent California from imposing its own quarantine on intrastate commerce. Further, the last proviso of section 161 provides that a state can adopt a quarantine that is parallel to, and not greater than, the quarantine adopted by the Secretary. Id. Therefore, defendants have the right to adopt a quarantine program that is similar to that adopted by the Secretary of Agriculture. At least three states have adopted such a quarantine. See Affidavit of Richard E. Rominger, Exhibit A, at p. 5.

Secretary has not imposed a federal quarantine. Thus, under this analysis, the outer limits of the preemptive reach of any "determined" quarantine are to be measured not by the scope of the infestation in question but by the geographical extent of the quarantine the Secretary imposes. Any state may then afford itself greater protection than the Secretary has provided. In short, defendants may contend their quarantines, covering the entire state of California, are permissible because the Secretary has not imposed his quarantine over that area.

However, such a construction of the Quarantine Act renders it meaningless, and ignores the legislative history cited above. In the Oregon-Washington R.R. case, this Court had held that the Quarantine Act occupied the entire field, thus

preempting any local quarantines, even if the Secretary had not acted at all. The effect of the Oregon-Washington R.R. case was thus to leave states defenseless in the face of an emergency during the time it took for the Secretary to marshall the facts and to act. It was this problem which Congress sought to correct in 1926 when it amended the Quarantine Act by permitting states to act where there was no determination by the Secretary that a quarantine was necessary to combat any dangerous plant disease or insect infestation.

Two interests thus are implicated in this legislation: 1) Congress' concern for uniformity among regulations and 2) for the free flow of trade between states, and a particular state's concern for its own agricultural economy. In any particular

situation the balancing of risks and responses is likely to be different whether it is performed by a federal or a local official. Congress in the 1926 amendment achieved a compromise by permitting a state to strike its own balance in the absence of action by the Secretary, but provided that when the Secretary did act, his determination as to how much of a quarantine is necessary would be exclusive. To construe the Quarantine Act otherwise gives no weight at all to the Secretary's determination. This would turn the statute on its head.

Defendants may further argue that even conceding arguendo that their quarantine would be preempted by the Plant Quarantine Act, the USDA quarantine was enacted under the Plant Pest Act, 7 U.S.C. § 150aa et seq., and the Pest Act contains no preemptive

language. This is unpersuasive. First, as explained above, California contends that the defendants' quarantines are preempted under both federal acts because the two must be read together. Second, also as stated above, the USDA will very shortly enact a quarantine under the Quarantine Act as well, making this argument moot. Finally, nothing in the legislative history of the Plant Pest Act indicates that it was intended not to be preemptive, and this is critical.

Under the Supreme Court's reasoning in Oregon-Washington R.R., absent explicit language that the statute is not preemptive, a quarantine statute will be construed as preempting local regulation. Congress put such explicit language in the Quarantine Act. However, when it enacted the Pest Act in 1944, it omitted that language. Congress was clearly aware of the existence of the

Quarantine Act. See 7 U.S.C. § 150jj. It must also be presumed to have known the result reached in the Oregon-Washington R.R. case. By not including in the Plant Pest Act the language it had inserted in the Quarantine Act in 1926, Congress indicated that it intended the Pest Act to be preemptive of local regulation. It was for this reason that it inserted section 150jj in the Act--to show that notwithstanding that the emergency powers under the Pest Act are preemptive, in non-emergency situations states are still free to act in the absence of action by the Secretary. California submits that this construction of the two acts and their interrelation is not only logical, but much more consistent with Congress' intentions than the arguments which will probably be advanced by defendants.

2. The Defendants' Quarantines Impose an Unreasonable Burden On Interstate Commerce, And Thus Violate The Commerce Clause.

Additionally, the defendant states' quarantines impose an unreasonable burden on interstate commerce, and are thus invalid under the Commerce Clause of the U.S. Constitution, Art. I, § 8, Cl. 3. As the Court recently noted in Hughes v. Oklahoma, 441 U.S. 322 (1979), the Commerce Clause reflects the concern of the Constitution's framers that

> ". . . in order to succeed, the new union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the Colonies and later among the States under the Articles of Confederation." 441 U.S. at 325-326.

Accordingly, this Court has interpreted the Commerce Clause not only as an authorization for congressional action, but also as a restriction on permissible state regulation. Hughes v. Oklahoma, supra; H.P. Hood & Sons,

Inc v. DuMond, 336 U.S. 525 (1949); Southern Pacific Co. v. Arizona, 325 U.S. 761 (1945).

In Pike v. Bruce Church, Inc., 397 U.S. 137 (1969), this Court recently described the scope and reach of the Commerce Clause, stating:

> "Where the statute regulates evenhandedly 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 . . . .
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> "If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities." 397 U.S. at 142.

The analysis in Pike has been expressly followed and applied in recent decisions of this Court. See e.g., Hughes v. Oklahoma, supra.

In applying the analysis, this Court has developed a three-part test. Under this test, inquiry must be made to determine (1) whether the challenged state law applies even-handedly to all commerce with only "incidental" effects on interstate commerce, or instead discriminates against interstate commerce on its face or in practical effect; (2) whether the state law serves a legitimate local purpose; and (3) whether alternative means are available to serve local purposes with a lesser impact on interstate commerce. See Hughes v. Oaklahoma, supra at 322, 336. Further, although the burden of showing discrimination falls on the party challenging the state law,

> "[W]hen discrimination against commerce is demonstrated, the burden falls on the State to justify it both in terms of the local benefits flowing from the statute and the unavailability of nondiscriminatory alternatives adequate to preserve the local interests at stake." Hughes v. Oklahoma, supra

at 336. See also Hunt v. Washington Apple Advertising Commission, 432 U.S. 333, 353 (1977).

As we will see, the defendant states' quarantines fail to meet the three-fold test formulated by this Court. Consequently, they cannot sustain the burden which they bear in this case, and hence their quarantines are invalid.

(a) Discrimination on Face of Quarantine Orders.

Although, as we explain below, the defendant states' quarantines have a discriminatory effect on interstate commerce, each is also discriminatory on its face. Indeed, the entire focus of the quarantines is on interstate commerce originating in California. The quarantines expressly apply only to interstate shipment of fruits and vegetables from California. The quarantines do not apply to shipments

from other states, or to intrastate shipments.

Thus, since the defendant states' quarantines are facially discriminatory, the remaining inquiries -- into the purpose of the regulations and their burden on interstate commerce -- are necessarily more strict. As this Court has stated:

> "Such facial discrimination by itself may be a fatal defect, regardless of the State's purpose, because 'the evil of protectionism can reside in legislative means as well as legislative ends. At a minimum such facial discrimination invokes the strictest scrutiny of any purported legitimate local purpose and of the absence of non-discriminatory alternatives.'" Hughes v. Oklanoma, supra at 337; Philadelphia v. New Jersey, 437 U.S. 617, 624 (1977).

As we shall see, the defendants' quarantines are unable to withstand such scrutiny. The asserted local purpose of each is suspect in light of quarantines already imposed by California and the United States, and the

purpose of the quarantine -- when measured against available alternatives -- is outweighed by the burden upon interstate commerce.

(b) Lack of Adequate Local Purpose

The defendant states' quarantines fail to meet the second part of the three-fold test formulated by this Court, in that they fail to serve a necessary local purpose. The asserted purpose of the defendants' quarantines is to prevent the spread of Medfly infestation into those states as a result of the importation of fruits and vegetables from California. This purpose, however, is already served by the quarantines established by California and the United States and California's monitoring program. As noted earlier, California now requires treatment, by fumigation or cold storage, of all host fruits and vegetables grown in the core area and the surrounding buffer zone,

which includes over a 2000 square mile area.[16/] Moreover, the USDA has imposed a similar quarantine upon the movement of such fruits and vegetables in interstate commerce. See 45 Fed. Reg. 50318-50324 (July 29, 1980), 46 Fed. Reg 36148 (July 14, 1981). There is no

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16. The California quarantine provides that all fruits and vegetables grown within the three counties "shall not be moved from the area under quarantine" unless (1) they are treated in a manner approved by the Director of the California Department of Food and Agriculture, or in the case of certain low risk crops, unless the items are "properly inspected." 3 Cal.Admin. Code, §§ 3406(d)(1), 3406(d)(3). The term "properly inspected" is defined as follows:

> "Properly inspected is defined as meaning that at least one-half of one percent of the material to move shall be used as a sample and this sample shall be cut and closely inspected for larvae of the Mediterranean fruit fly before being moved from the quarantine area. In addition, the sample taken shall be a biased one as it shall be made up as much as possible of overripe, broken, and decayed material." Id. at § 3406(d)(3)(B).

evidence that the Medfly has spread, or threatens to spread, beyond the core area that is governed by the California and federal quarantines. See Declarations of Donald R. Dilley, Exhibit E at pp.2-3; Kenneth S. Hagen, Exhibit D at p.4, and Howard R. Ingham, Exhibit C at p. 4. Further, California's present monitoring program is adequate to detect the presence of the Medfly should it spread beyond the present quarantine area. See Declarations of Kenneth S. Hagen and Donald R. Dilley. At present there are traps at a density varying from 5 to 25 traps per square mile within the infested area depending upon proximity to Medfly or larvae finds, and throughout the urban areas of the state at a density of five per square mile. It is only in rural residential and host areas that the present California program provides fewer

traps than what defendants would require. However, because of the particular characteristics of the Medfly, it is likely to spread, if at all, first to urban areas outside the infested area and last to rural areas. See Declarations of Kenneth S. Hagen, Ex.D at p. 3 and Donald R. Dilley, Ex.E, p.3. Thus during the period required for California to put its expanded monitoring program into effect, it is not likely that the fly will spread undetected to rural areas. California's procedure of concentrating trapping activity in the area immediately adjacent to the infested area and gradually working outward is a more rational way to detect the advance of the Medfly than what defendants would propose -- and is the only practicable method at the present time.

Moreover, entomologists reject the idea that the trap densities set forth in

defendants' quarantines are necessary to detect Medfly movement out of the area presently under USDA quarantine. Declaration of Donald R. Dilley, Ex. E, at p.4; Declaration of Kenneth S. Hagen, Ex. D at pp.3-4. Past infestations of the Medfly have occurred only in urban areas, not rural areas. Ex.D, p.3; Ex.E, p.3. Detection of those infestations has occurred with traps at a density of 1 per square mile. Pursuant to its own eradication program, California has already increased the density of traps in urban areas throughout the state to 5 per square mile. Declaration of Donald R. Dilley, Ex.E, at p.3. It maintains a trap density of 1 per square mile in all rural host areas. Id., p.3. Thus not only does California already maintain traps in rural areas at a density which has proven to be sufficient to detect Medfly infestation, but in urban areas -- which recent

history has shown to be most likely to be the site of an infestation -- California has already increased the density of detection traps to 5 per square mile. In these circumstances, the trap density requirements set forth in defendants' quarantines, while exacting an enormous cost from California's agricultural industry, add little or nothing to the Medfly detection and eradication effort.

Thus, the only purpose served by the defendants' quarantines is (1) to bar the importation into those states of fruits and vegetables from areas in California where no infestation exists and (2) to bar the importation into those states of fruits and vegetables from areas in California which are already under the quarantine programs of California and the United States. The defendants' quarantines are thus

unnecessary to the extent that they extend beyond the existing State and federal quarantines, and redundant to the extent that they do not.

Both the quarantines established by California and the United States and California's monitoring program are tailored to the biological area which the Medfly has actually infested, or threatens to infest. Conversely, the defendants' quarantines are linked to the political boundaries of California, which have no significant relationship to the biological area of infestation. It is anomalous that defendants would restrict the shipment of citrus fruits grown in southern California, several hundred miles from the area of infestation, but would not similarly restrict the shipment of citrus fruits grown a few miles eastward in Arizona. This anomaly, we believe, shows that the defendants'

quarantines are not tailored to the specific exigencies of the Medfly problem, and thus do not serve a valid local purpose.

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(C) Availability of Alternative Means to Serve the Local Purpose of Defendant States

If the Court agrees with California's argument that the quarantines imposed by defendant states serve no valid and necessary local purpose, then it will be unnecessary to consider the availability of alternative means to serve the purported local purpose of those quarantines. Assuming arguendo, however, that defendants' actions can be justified in terms of some valid local purpose, California contends that purpose can be adequately served, and in fact is presently being served, by alternative means which impose a lesser burden on interstate commerce.

From a purely biological standpoint, the trap densities mandated by defendant states are unjustified. Entomologists reject the idea that trap densities of five per

square mile throughout the state of California are necessary to detect Medfly movement out of the area presently under USDA quarantine. Declarations of Kenneth Hagen, Ex. D, at p.3; Donald R. Dilley, Ex. E, at p.4. Past Medfly infestations have occurred only in urban areas, not rural areas, and detection of those infestations has occurred with traps at a density of only one per square mile. Declaration of Robert C. Roberson, Ex.G, at p.2; Declaration of Kenneth S. Hagen, Ex.D at p.3. Under its own eradication and detection program, California has already increased trap density in urban areas, where any new infestation would be most likely to occur, to five per square mile. Declaration of Robert C. Roberson, Ex. G, at pp.2-3. Further, California maintains a trap density of one per square mile in all rural host

areas. Id. at p.3. Thus, not only does California already maintain traps in rural areas at a density which has proven in the past to be sufficient to detect Medfly infestations, but in urban areas, California has already increased the density of detection traps to five per square mile. In these circumstances, the trap density requirements contained in defendants' quarantines, while exacting an enormous cost from California's agricultural industry, add little or nothing to the Medfly detection and eradication efforts undertaken by California and USDA.

California's argument that defendants' quarantines constitute unreasonable and biologically unnecessary overkill is further substantiated by the fact that other states with significant agricultural economies have elected to adopt far less

restrictive quarantines on California fruits and vegetables. Unlike defendants, these other states do not require that California provide a trap density of five per square mile in areas outside the USDA quarantine area, nor do they require a 30-day period of operation for those traps before California can certify that produce shipments come from Medfly-free counties, as the Texas quarantine does.

The states of Arkansas, Virginia, and Colorado have determined that they will not require certification by California agricultural authorities that shipments of fruits and vegetables are free of the Medfly except for shipments from the three counties quarantined by USDA. See Affidavit of Richard Rominger, Ex. A, at pp.2-3, and subexhibits attached thereto. The other states with Medfly quarantines -- Georgia,

Kentucky, Louisiana, North Carolina, Oklahoma, and Tennessee -- although requiring certification from non-USDA quarantined areas, simply require a statement that the commodities are from a county that is free of the Medfly. Id. at p.5; see also subexhibits attached thereto. None of these states imposes any trap density requirements.

In short, the extremely restrictive and expensive trapping requirements imposed by defendant states for California counties outside the USDA quarantine boundaries are not justified by biological necessity. The less onerous quarantine standards demanded by the other states mentioned above attest to this fact. Therefore, even assuming defendants can demonstrate that a valid and necessary local purpose underlies their burdensome quarantines, it is quite clear that less burdensome alternatives are available to them to achieve

their goal: protection of their agricultural economies from the Medfly. Indeed, the majority of states which have acted to protect the interests of their agricultural sectors have rejected the course taken by the defendant states in favor of more reasonable, and much less burdensome, alternatives.

(d) Effect on Interstate Commerce.

Finally, the defendants' quarantines have a substantial, adverse effect on interstate commerce. In 1979, the California agricultural industry achieved sales of approximately $12.1 billion. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2. The amount of sales attributed to Santa Clara County, where the Medfly infestation is largely contained, was approximately $123.5 million during the same period. Id. at subexhibit 1, p. 12. Thus, the agricultural production attributed to the area of infestation is only

about 1% of the State's entire agricultural production. Stated differently, about 99% of the State's agricultural production takes place beyond the area of infestation. Thus, defendants' quarantines apply to all fruits and vegetables grown in California even though 99% of such products are clearly grown beyond the area of infestation. Moreover, as noted above, the remaining 1% of the products grown in the area of infestation are subject to the quarantines established by California and the United States. The defendants' quarantines are thus excessive in their breadth.

The defendants' quarantines will also have a broad, adverse national impact. The California agricultural industry is the largest such industry in the nation, and is a major source of the nation's food supply. A substantial portion of the fruits and vegetables consumed nationally are grown in

California beyond the area of infestation, but nonetheless must be fumigated under the defendants' quarantine programs. For example, California supplied 84.2% of the nation's avocado supply in 1979, and most of the supply is grown in southern California, far from the area of infestation. See Affidavit of Richard E. Rominger, Exhibit A, at p. 2. California supplied nearly all of the nation's plum supply in 1979, and this supply is primarily grown in central California counties located far from the area of infestation. Id. California supplied 91.2% of the nation's grape supply in 1979, and the entire supply was grown beyond the area of infestation. Id., and subexhibit 1, at p. 4. Thus, the defendants' quarantine programs would apply to many California products that are primarily grown beyond the area of infestation, and that are primarily

consumed in interstate markets.

To put the defendants' quarantines in the proper perspective, it is necessary to understand the havoc they are, at this very moment, wreaking on California's agricultural industry. California cannot comply, at least in the short run, with the certification requirements set forth in defendants' quarantines. Compliance with the trap density standards imposed upon California by defendant states is impracticable in the near future. Aside from the fact that the immediate imposition of these biologically unnecessary trapping requirements would require the diversion of large numbers of state and local government personnel away from the Medfly eradication effort and from other important duties, as well as substantial monetary resources of state and local authorities, it could take as long as three to four weeks to place

the additional 30,000 traps required throughout rural host areas of the state.[17/] Declaration of Robert C. Roberson, Ex. G, at p.3. In addition, the 30-day monitoring period insisted upon by Texas would prevent any crops from being shipped to or through Texas before the middle of September, well after the harvest of many California fruits and vegetables. Id. at pp.3-4.

Therefore, California fruit and vegetable growers face two immediate choices. First, they can attempt to comply with fumigation and cold storage requirements for all

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17. The 30,000 trap number is used advisedly. That number of additional traps would be required only if the defendants' quarantines are interpreted to require 5 traps per square mile in rural host areas outside of the USDA quarantine area. If defendants' quarantines are interpreted to require a density of 5 traps per square mile throughout California, the number of tion of Robert C. Roberson, Ex.G. This ambiguity is itself a defect in defendants' quarantines.

of their produce, including that originating in counties outside the USDA quarantine area. Second, they can abandon their markets in the five defendant states and reroute shipments bound for markets in other areas of the country around the defendant states.[18/] The former option is not a practical alternative since sufficient facilities are not available to treat the volume of fruits and vegetables covered by defendants' orders. Supplemental Affidavit of Howard Ingham, attached to Declaration of Charles W. Getz IV, Exhibit L. Moreover, even if sufficient fumigation and cold storage facilities could be obtained, the economic costs of requiring California's

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18. Defendants' quarantines apply to all shipments which "enter" those states. Therefore, they would appear to apply not only to produce bound for markets in those five states, but shipments through those states to other parts of the country as well.

agricultural industry to comply with defendants' quarantine treatment requirements would be staggering. Such costs would consist of (1) the cost of providing fumigation and cold storage treatment of affected host plants, and (2) the dollar value of crops which would be damaged by such treatment. See Affidavit of Gordon A. Rowe, Exhibit H, at pp.5-6. The first category includes the cost of facilities for the fumigation and cold storage of host plants. Id. at p.5. The total cost of needed facilities for 20 affected host plants is estimated to be $497 million. Id. In addition, defendants' quarantine would also require annual costs for the purchase of chemical supplies for fumigation purposes, labor costs, energy costs, and other supplies required for the treatment program. These additional annual costs are estimated to be $38 million.

Id. Thus, the total cost for complying with the quarantines during the first year would be approximately $535 million.

The second category of costs associated with quarantine treatments involves the value of crops which would be damaged by treatment. Since post-harvest treatment of fresh produce is not 100% effective, the California agricultural industry would be expected to lose a significant portion of the harvested crop as the result of gas burn, scald, or other fumigation problems. Id. at pp.5-6. Additional portions of the harvested crop would be lost due to increased deterioration of the shipped product. Id. at p.6. Although it is impossible to precisely predict the dollar amount of this damage, the best estimates range from $48 million to $334 million. Id.

Because of the direct costs and crop damage associated with the defendants'

quarantine, consumers in California and around the United States would be expected to pay substantially higher prices for fruits and vegetables. California provides a large part of the nation's supply of fruits and vegetables. Id. at pp. 6-7. Accordingly, the increased direct costs of complying with the Texas quarantine would result in substantially higher consumer prices, although the exact amount of the increase cannot be accurately determined at this time. Id. Assuming, however, that the quarantines result in the loss of 5-10% of California's fruits and vegetables as the result of crop damage alone, consumer prices would be expected to increase by 3-8% annually. Id.

The other alternative available to California growers, abandonment of their markets in the five defendant states, would also entail great costs and is no more acceptable. The

volume of California fresh produce shipments into the defendant states is extremely large. For example, in 1980 approximately $12.4 million worth of citrus fruits grown in California were sold in just four of the defendant states. Affidavit of Scott D. Morse Ex. I, at p.3. In the month of July 1980 alone, nearly 69 million pounds of fresh fruits and vegetables grown in California were shipped to those four states. Id. Further evidence of the importance of defendant states to California agriculture is found in the fact that California growers currently own a large share of the fresh produce markets in those states. In 1980, California fruit and vegetable producers accounted for 30 percent of all Texas unloads from sources outside of Texas. Affidavit of Gordon A. Rowe, Ex. H, at p.6. Similarly, California fresh produce shippers in 1980

accounted for 16 percent of the unloads in selected cities in Alabama and Florida, and 9 percent of the unloads in Columbia, South Carolina, Id.

Furthermore, since defendants' quarantines apparently apply to shipments of fruits and vegetables from California through those states to markets in other states, the costs of routing shipments around the defendant states would have to be borne by growers and consumers. A substantial portion of such products pass through defendant states' territories, particularly Texas, on their way to other markets. For example, approximately 75 percent of the produce shipped by one California producer to eastern markets is presently routed through Texas. Affidavit of Walter E. Tindell, sub-exhibit 4 attached to the Declaration of Charles W. Getz, IV, Ex. L. Such products

would have to be rerouted through other states in order to reach markets located east of Texas. The cost of shipping such products around Texas and through other states would no doubt be substantial.

For the above reasons, the defendants' quarantines have an adverse impact on interstate commerce that is not justified by the local interests which they are ostensibly seeking to protect. This case is thus similar to that in Railroad Co. v. Husen, 95 U.S. 465 (1877). There, the State of Missouri had adopted a statute which banned the importation of Texas, Mexican or Indian cattle during certain months of the year. The statute applied to all cattle regardless of whether they were diseased, and to all shipments regardless of whether they were unloaded in Missouri. The Court struck down the

statute, commenting:

> "The reach of the statute was far beyond its professed object, and far into the realm which is within the exclusive jurisdiction of Congress." 95 U.S. at 472. See also Dean Milk v. Madison, 340 U.S. 349 (1951); Baldwin v. Seelig, 294 U.S. 511 (1935).

As in Husen, the defendants' quarantines fail to distinguish between products grown in the infested area and crops grown elsewhere, and between products destined for their markets and products destined for other markets. As in Husen, the defendants' quarantines thus impose an unlawful burden on interstate commerce.

This case is also similar to that in Dean Milk Co. v. Madison, 340 U.S. 349 (1951). There, the Court stated:

> "In thus erecting an economic barrier protecting a major local industry against competition from without the State, Madison plainly discriminates against interstate commerce. This it cannot do, even in the exercise of its unquestioned power to protect

> the health and safety of its people, if reasonable nondiscriminatory alternatives, adequate to conserve legitimate local interests, are available. Cf. Baldwin v. Seelig, Inc., supra, at 524; Minnesota v. Barber, 136 U.S. 313, 328 (1890)." 340 U.S. at 354. (Emphasis added.)

Here, "reasonable nondiscriminatory alternatives" are available to defendants for the protection of "the health and safety of [their] people." They could adopt the kind of quarantine already adopted by California and the United States, which would require that fruits and vegetables entering defendant states from the area of infestation must be treated by fumigation or cold storage or, with respect to low-risk crops, must be "properly inspected" by their officials, cf. 3 Cal. Admin.Code § 3406. This would allow California the time necessary to have its expanded monitoring program in place. That program, when in effect, would meet

the quarantines' criteria. This alternative remedy would satisfy defendants' legitimate concerns for the health and safety of their citizens, and also minimize the burden on interstate commerce that results from defendants' existing quarantines.

For the above reasons, the defendants' quarantines are unconstitutionally excessive in their scope and reach. They are not reasonably related to the protection of local concerns, since they restrict the movement in interstate commerce of products that are grown far beyond the area of infestation in California. Moreover, defendants' concerns are satisfied by the existing quarantines and monitoring programs established by California and the United States. If defendant states believe that they must take independent action to protect their own interests, they could tailor their quarantine

to the biological area of infestation, as California and the United States, as well as other states, have done. In their present form, however, the defendants' quarantines place an unreasonable burden on interstate commerce, and thus violates the constitutional proscription against such burdens.

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B. The Balance of Relative Harm Weighs Heavily In Favor of California Rather Than Defendants

In our discussion of the effects of defendants' quarantines on interstate commerce, we argued that those quarantines are not necessary to satisfy defendants' concerns for the health and safety of their citizens, and that they impose an unreasonable burden on interstate commerce. We will not repeat this discussion here. Instead, we argue simply that, for the same reasons that the quarantines unconstitutionally burden interstate commerce, the balance of harm in this case weighs heavily in favor of California rather than the defendant states.

As discussed above, the existing quarantines established by California and the United States apply to fruits and vegetables grown in the core area of the infestation, and also a surrounding

buffer zone. Thus, these quarantines adequately protect against the spread of the Medfly infestation. Defendants' quarantines, which apply to fruits and vegetables grown anywhere in California, restrict the movement of products that are grown far beyond the area of infestation. This restriction imposes a heavy burden on California's agricultural industry.

The heavy losses which California fruit and vegetable producers will suffer if this Court does not enjoin defendants from enforcing their quarantines will, in turn, have a ripple effect on the economy of California in general and on state and local government revenues. As noted above, the California agricultural industry is responsible for substantial employment in California, and is also a major source of the State's tax revenues. Thus, any

adverse effects imposed on the agricultural industry will be felt by the people of California in the form of reduced employment and lost tax revenues. Although it is impossible to quantify these adverse effects at this time, they will undoutedly be substantial because of the great volume and importance of defendants' markets to California fresh produce exporters.

With respect to the interests which defendants are seeking to protect, one additional factor should be noted. Although quarantines are often associated with dangers to the public health, this is not the case here. The Medfly poses no threat to the public health whatsoever, nor can defendants reasonably argue otherwise. The only danger is that Medfly will infest crops and thus cause economic damage to farmers. Therefore, defendants are not attempting to protect

the health of their citizens in this case. Instead, they are, at most, attempting to protect their agricultural industries. In balancing the relative harm in this case, the Court should weigh the potential harm to California's agricultural industry -- and to its people as the result of reduced employment and diminished tax revenues -- against the potential harm to defendants' agricultural industries. Since California has determined that its agricultural economy is adequately protected by the existing quarantines, and since the United States has made a similar determination with respect to the agricultural economy of the entire country, it would seem that defendants' quarantines are unnecessary to protect their own agricultural economies.

In conclusion, the people of California will suffer great and irreparable

harm if this Court does not grant interim and permanent injunctive relief, while defendant states will suffer little, if any, harm in the converse situation. Thus, the balance of relative harm in this case weighs heavily in California's favor.

CONCLUSION

California has a vital interest in eradicating the Medfly infestation, for that infestation poses a paramount threat to California's own agricultural industry. Thus, there is no reason to believe that California will fail to exercise the greatest diligence, or spare any of its energy or resources, in the effort to combat and eradicate this formidable threat. Since California stands to suffer the most, it can be expected to work the hardest to eliminate the problem.

For the above reasons, it is respectfully requested that this Court grant

California's motion for leave to file complaint, application for temporary restraining order and motion for preliminary injunction.

Dated:

Respectfully submitted,

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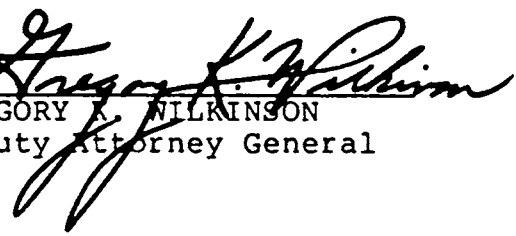
By 
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APPENDIX A

Section 8, Federal Plant Quarantine Act, 7 U.S.C. § 161.

"§ 161. Interstate quarantine; shipments or removals from quarantined localities forbidden; regulations by Secretary for shipment, etc., from quarantined localities; notice and hearings; promulgation.

"The Secretary of Agriculture is authorized and directed to quarantine any State, Territory, or District of the United States, or any portion thereof, when he shall determine that such quarantine is necessary to prevent the spread of a dangerous plant disease or insect infestation, new to or not theretofore widely prevalent or distributed within and throughout the United States. No person shall ship or offer for shipment to any common carrier, nor shall any common carrier receive for transportation or

transport, nor shall any person carry or transport from any quarantined State or Territory or District of the United States, or from any quarantined portion thereof, into or through any other State or Territory or District, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products or any class of stone or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine except as hereinafter provided. It shall be unlawful to move, or allow to be moved, any class of nursery stock or any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone or quarry products or any other article of any character whatsoever, capable of carrying

any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from any quarantined State or Territory or District of the United States or quarantined portion thereof, into or through any other State or Territory or District, in manner or method or under conditions other than those prescribed by the Secretary of Agriculture. It shall be the duty of the Secretary of Agriculture, when the public interests will permit, to make and promulgate rules and regulations which shall permit and govern the inspection, disinfection, certification, and method and manner of delivery and shipment of the class of nursery stock or of any other class of plants, fruits, vegetables, roots, bulbs, seeds, or other plant products, or any class of stone

or quarry products, or any other article of any character whatsoever, capable of carrying any dangerous plant disease or insect infestation, specified in the notice of quarantine hereinbefore provided, and regardless of the use for which the same is intended, from a quarantined State or Territory or District of the United States, or quarantined portion thereof, into or through any other State or Territory or District: Provided, That before the Secretary of Agriculture shall promulgate his determination that it is necessary to quarantine any State, Territory, or District of the United States, or portion thereof, under the authority given in this section, he shall, after due notice to interested parties, give a public hearing under such rules and regulations as he shall prescribe, at which hearing any interested party may appear and be heard,

either in person or by attorney: Provided further, That until the Secretary of Agriculture shall have made a determination that such a quarantine is necessary and has duly established the same with reference to any dangerous plant disease or insect infestation, as hereinabove provided, nothing in this chapter shall be construed to prevent any State, Territory, Insular Possession, or District from promulgating, enacting, and enforcing any quarantine, prohibiting or restricting the transportation of any class of nursery stock, plant, fruit, seed, or other product or article subject to the restrictions of this section, into or through such State, Territory, District, or portion thereof, from any other State, Territory, District, or portion thereof, when it shall be found, by the State, Territory, or District promulgating or enacting the same, that such

dangerous plant disease or insect infestation exists in such other State, Territory, District, or portion thereof: Provided further, That the Secretary of Agriculture is authorized, whenever he deems such action advisable and necessary to carry out the purposes of this chapter, to cooperate with any State, Territory, or District, in connection with any quarantine, enacted or promulgated by such State, Territory, or District, as specified in the preceding proviso: Provided further, That any nursery stock, plant, fruit, seed, or other product or article, subject to the restrictions of this section, a quarantine with respect to which shall have been established by the Secretary of Agriculture under the provisions of this chapter shall, when transported to, into, or through any State, Territory, or District, in violation of such quarantine, be subject to

the operation and effect of the laws of such State, Territory, or District, enacted in the exercise of its police powers, to the same extent and in the same manner as though such nursery stock, plant, fruit, seed, or other product or article has been produced in such State, Territory, or District, and shall not be exempt therefrom by reason of being introduced therein in original packages or otherwise."

APPENDIX B

Title 7, United States Code Annotated,

Section 150dd.

"§ 150dd. (a) Except as provided in subsection (c) of this section, the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States, or interstate, and which he has reason to believe is infested or infected by or contains any such plant pest, or which

has moved into the United States, or interstate, and which he has reason to believe was infested or infected by or contained any such plant pest at the time of such movement; and any plant pest, product, article, or means of conveyance which is moving into or through the United States, or interstate, or has moved into the United States, or interstate, in violation of this chapter or any regulation thereunder: Provided, That this subsection shall not authorize such action with respect to any product, article, means of conveyance, or plant pest subject, at the time of the proposed action, to disposal under the Plant Quarantine Act.

(b) Except as provided in subsection (c) of this section, the Secretary may order the owner of any

product, article, means of conveyance, or plant pest subject to disposal under subsection (a) of this section, or his agent, to treat, apply other remedial measures to, destroy, or make other disposal of such product, article, means of conveyance, or plant pest, without cost to the Federal Government and in such manner as the Secretary deems appropriate. The Secretary may apply to the United States district court, or to the United States court of any Territory or possession, for the judicial district in which such person resides or transacts business or in which the product, article, means of conveyance, or plant pest is found, for enforcement of such order by injunction, mandatory or otherwise. Process in any such case may be served in any judicial district wherein the defendant resides or transacts

business or may be found, and subpena for witnesses who are required to attend a court in and judicial district in such a case may run into any other judicial district.

(c) No product, article, means of conveyance, or plant pest shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of plant pests new to or not theretofore known to be widely prevalent or distributed within and throughout the United States.