CV 11-55440 NCA (ABCx)

United States Court of Appeals for the Second Circuit

NATIONAL MEAT PRODUCERS ASSOCIATION

Appellee

v.

COMMISSIONER, NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS AND THE NEW YORK STATE DEPARTMENT OF AGRICULTURE AND MARKETS

Appellants

On Appeal From the United States District Court for the Southern District of New York

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Brief for Appellees National Meat Producers Association

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ISSUES PRESENTED

I. Is the Animal Products Consumer Information Act preempted by the Federal Meat Inspection Act?

II. Does the Animal Products Consumer Information Act violate the Commerce Clause of the U.S. Constitution?

STATEMENT OF THE CASE

Appellee National Meat Producers Association ("NMPA") filed a complaint for declaratory and injunctive relief against Appellants, the Commissioner of the New York State Department of Agriculture and Markets, and the New York State Department of Agriculture and Markets in the United States District Court in the Southern District of New York. *Nat'l Meat Producers Ass'n v. Comm'r, N.Y. State Dep't of Agric. and Mkts.*, No. CV 11-55440 NCA (ABC) U.S. Dist. at 1:8-9, 19-22 (S.D.N.Y Sep. 15 2012).

The complaint alleged that the Animal Products Consumer Information Act ("APCIA") violated the Supremacy and Commerce Clauses of the United States Constitution. *Id*. at 2:1-5. NMPA moved for summary judgment on two grounds: (1) the Federal Meat Inspection Act ("FMIA") preempted the APCIA, and (2) the APCIA violated the Commerce Clause because it burdened interstate commerce by favoring in-state animal product processors over out-of-state processors. *Id*.

On September 15, 2012, the District Court found that the FMIA did not preempt the APCIA because New York had a legitimate state interest in protecting and educating its consumers and the FMIA's underlying purpose of regulating the quality of meat products was not affected by the purpose of the APCIA. *Id*. at 16:2-4. The District Court granted NMPA's motion for summary judgment on the Commerce Clause issue finding that New York could have employed a less discriminatory alternative to the APCIA that did not support in-state purchases over out-of-state purchases. *Id*. at 21:5-8.

Appellants appeal the District Court's grant of summary judgment and the Court of Appeals for the Second Circuit granted review on September 15, 2012. *Nat'l Meat Producers*

Ass'n v. Comm'r, N.Y. State Dep't of Agric. and Mkts., (Briefing Order) Case No. CV 11-55440 NCA (ABCx) at 1 (2d Cir. Sep. 15 2012).

STATEMENT OF THE FACTS

In 1907 Congress enacted the Federal Meat Inspection Act in attempt to create uniform standards under which to assure consumers that the meat they saw for sale was wholesome and unadulterated. 28 U.S.C. § 602 (West 2012). Part of this federal scheme was to create uniform labeling requirements for all meat and meat products for sale throughout the nation. 28 U.S.C. § 678 (West 2012).

In 2010, in an effort to find ways to reduce costs and burdens to the state, the New York legislature held over 1,000 hours of hearings on health care and environmental matters. After coming up with over 500 different cost-saving measures, of which 20 advocated new regulations on the animal agriculture industry, it enacted the Animal Products Consumer Information Act. N.Y. AGRIC. & MKTS. § 1000.4 (2010). The Act is a "Labelling Requirement" that requires retail vendors to "prominently" display for the consumer viewing meat for sale a sign reading,

> PUBLIC INTEREST WARNING: Many chronic diseases, including heart disease, can largely be prevented and, in many cases, reversed by avoiding the consumption of animal products and eating a whole food, plant based diet. Industrial animal agriculture is also a major source of pollution. Animal handling techniques also lead to animal suffering. The State encourages its citizens to conduct research and make informed choices when purchasing and consuming animal products. For more information, visit www.informedchoice.ny.gov.

Id.

The same notice must be presented in menus in restaurants where meat or meat products are sold. *Id*.

SUMMARY OF ARGUMENT

New York's Animal Products Consumer Information Act ("APCIA") is preempted by the Federal Meat Inspection Act ("FMIA") for two reasons. The first is that the law is a labeling restriction, which is expressly preempted in the FMIA under section 678. 21 U.S.C. § 678 (West 2012). The preemption provision as well as the savings clause of section 678 show Congress's clear intent to preempt any additional or different labeling requirements enacted by the states. *Id.*

Second, the labeling New York's law require obstruct the ability of Congress to fully implement the purposes of the FMIA and are therefore in conflict with the Act. Congress, in 1907 and through later amendments, sought to create uniform meat labeling laws under which to inform consumers of the safety and wholesomeness of their meat products. Congress also sought to protect the economic interests of the meat industry through such consumer assurance. New York's law requires labeling that sends a contrary message regarding safety and that seeks to destroy the market for meat products, and is therefore in direct conflict with the federal scheme.

The APCIA also violates the Commerce Clause of the United States Constitution because it discriminates against interstate commerce. The APCIA supports in-state purchases over out-of-state purchases and, although facially neutral toward interstate commerce, poses discriminatory effects on out-of-state animal products processors. Furthermore, the stated purpose of the APCIA is pre-textual: the legislative history behind the APCIA suggests that the New York legislature enacted the APCIA as a government cost-saving measure, not as a protection measure for the public health, environment, and farm animals. Even if the APCIA's stated purpose were legitimate, the APCIA ultimately fails the balancing test established in *Pike v. Bruce Church, Inc.* because less discriminatory alternatives to the APCIA exist. 397 U.S. 137 (1970)

JURISDICTION

This court has jurisdiction premised on the existence of a federal question implicated by the Federal Meat Inspection Act of 1907, as amended, in particular 28 U.S.C. § 1331, and the court's authority to order declaratory and injunctive relief in relation thereto. 28 U.S.C. §§ 2201, 2202.

ARGUMENT

I. NEW YORK'S LABELING LAW IS PREEMPTED BY THE FEDERAL MEAT INSPECTION ACT.

Appellate courts review de novo a district court's application of preemption principles. *New York SMSA Ltd. P'ship v. Town of Clarkstown*, 612 F.3d 97, 103 (2d Cir. 2010) (per curiam).

A. New York's placards and menu notices are "labeling" under the FMIA.

Under the Federal Meat Inspection Act ("FMIA"), "'labeling' means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) *accompanying* such article." 21 U.S.C. § 601(p) (West 2012) (emphasis added). In interpreting the meaning of the word "accompanying" as used to define labeling in a Food Drug and Cosmetic Act provision identical to that in the FMIA, the Supreme Court found that "physical attachment or continuity is unnecessary" for a writing to "accompany" a product. *Kordel v. U.S.*, 335 U.S. 345, 351 (1948). Therefore, because physical attachment is not requisite, to determine whether a printed material is "labeling" accompanying a product, it is necessary to determine the *function* of the printed material.

Using this reasoning in a case very similar to this one, the California Court of Appeal, following *Kordel*, found that for a label to "accompany" an article for sale, the written material may be "used in the sale of the [article]," supplement or explain it, or have a "textual relationship" with it. *Am. Meat Inst. v. Leeman*, 180 Cal. App. 4th 728, 760 (2009) (citing *Kordel*, 335 U.S. at 350) ("*AMI*"). At issue in *AMI* was a California requirement that a point-of-sale placard be placed where meat products were sold, warning of what California deemed to be a harmful ingredient in meat. *Id*. at 730. The court found the warning to be "labeling" because the warning placards "supplemented and explained" the meat product, giving consumers additional information about the product. *Id*. at 756. The court also found that it was labeling because there was a close "textual relationship" between the warning and the product to which it referred: the point-of-sale placards were necessarily "designed for use in the distribution and sale" of the product, because it would "likely to be read and understood by an ordinary individual under customary conditions of purchase or use." *AMI*, 180 Cal. App. 4th at 760.

Here, New York's placards and menu warnings supplement and explain a meat product: they supplement the USDA-mandated labels by making additional statements about the wholesomeness of the product and the product's relationship to human health and the environment, and they explain the purported impact of the product on animal welfare. These written materials are also of a promotional nature: they warn against the consumption of meat and therefore promote the non-purchasing of the meat product, including beef and pork products. And at all times the materials are directly aimed at and visible to those consumers who are contemplating purchasing meat products.

Additionally, in a case dealing with FMIA labeling and preemption, a Michigan court found that a "label" is an attached "identifying, descriptive or promotional matter" about the item

being "'labeled.'" *Am. Meat Inst. v. Ball*, 424 F. Supp. 758, 763 (W.D. Mich. 1976) (the court ultimately did not find the state's notices in question to be "labeling" because of the notices' subject matter: "Congress simply had a different object in mind when it regulated "'labeling.'"). As written in section 601 of the FMIA, "label" and "other written . . . matter" are equivalent for purposes of the section. 21 U.S.C. § 601(p) (West 2012). Therefore, using the *Ball* court's analysis, written material of a descriptive or promotional nature with the requisite proximity to the product would constitute "labeling."

The function of the New York warning statement and its placement requirements neatly fit each of the above courts' definitions of labeling. Additionally it would appear the state itself considered such warnings to be labeling in that they titled section 4 of the law "Labelling Requirement." N.Y. AGRIC. & MKTS. § 1000.4 (2010).

B. <u>New York's labels are expressly preempted by the FMIA.</u>

1. <u>There is no presumption against preemption.</u>

The Constitution explicitly identifies that states may not usurp the powers of the federal government: "the Laws of the United States which shall be made in Pursuance thereof . . . shall be the Supreme Law of the Land." U.S. Const. art. VI, § 1. Although the states traditionally possess the power to regulate for health and safety, their authority to do exists only where the Constitution allows. Recently, the Supreme Court ruled that there is no presumption against preemption where, as here, the area of law in question is one in which "there has been a history of significant federal presence." *U.S. v. Locke*, 529 U.S. 89, 108 (2000). Because the FMIA, which regulates all aspects of meat production, was enacted over a century ago, there should be no presumption against federal preemption of New York's law.

2. The language of section 678 clearly shows Congress's intent to preempt state labeling laws.

"The question of whether a certain state action is preempted by federal law is one of congressional intent." *Gade v. Nat'l Solid Waste Mgmt.*, 505 U.S. 525, 540-41 (1992). Congressional intent can be hard to ascertain, but a statute's unequivocal language can, at times, clearly show its intent: "State law is expressly preempted when Congress so states through explicit statutory language." *Jones v. Rath Packing Co.*, 430 U.S. 519 (1977). Here the FMIA contains a very explicit preemption provision: "Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State . . . ." 21 U.S.C. § 678 (West 2012). The provision is original to the 1907 Act and has never since been amended.

The Supreme Court recently found, under a similar preemption provision of the FMIA, that a California law that imposed requirements upon slaughterhouses' handling of certain animals was preempted. *Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965 (2012). The preemption provision in question there read, "Requirements within the scope of [the Act] with respect to premises, facilities and operations of any establishment at which inspection is provided under [the Act] which are *in addition to, or different than* those made under [the Act] may not be imposed by any State." 21 U.S.C. § 678 (West 2012) (emphasis added). The Court found that the clause "sweeps widely" and "any additional or different—even if non-conflicting—requirements that fall within the scope of the Act and concern a slaughterhouse's facilities or operations" were preempted. *Nat'l Meat Ass'n*, 132 S. Ct. at 970.

Here, similarly, because the New York warning placards are “labeling” and because the New York law is a labeling requirement that is “different than” and “in addition to” that which the USDA has prior approved, it is preempted by section 678.

In addition, the Ninth Circuit found that the language and legislative history of FMIA section 678 “clearly shows the intent of Congress to create a uniform national labeling standard.” *Rath Packing Co. v. M. H. Becker*, 530 F.2d 1295, 1313 (9th Cir. 1975), *aff'd sub nom. Jones v. Rath Packing Co.*, 430 U.S. 519 (1977). “The express language of § 678 implements this clear Congressional intent.” *Id*.

The savings clause of section 678 reinforces this conclusion. The section states that the Act “shall not preclude any State . . . from making requirement[s] or taking *other action*, consistent with this [Act], with respect to any other matters regulated under this [Act].” 21 U.S.C. § 678 (West 2012) (emphasis added). This sentence directly follows the labeling-requirement preemption clause. Therefore, “other action” means action other than enacting labeling requirements. Likewise, as clumsy as it is, “other matters” reiterates that any state action taken must be in regard to matters other than “marking, labeling, packaging, and ingredient requirements” and done so in a way that is “consistent” with the Act. *Id*.

Although the FMIA allows for the *enforcement* of federal standards, it does not allow for the *creation* of such standards. *Id*. A state may enforce the FMIA labeling requirements, but it may not create labeling requirements itself. Yet this is precisely what New York has done; it has required additional labeling, unapproved and unrequired by the federal scheme, an action explicitly prohibited under section 678.

C. Even if New York's warning requirement were not expressly preempted, it is in direct conflict with FMIA's statutory scheme and is impliedly preempted.

State law is impliedly preempted when it frustrates or "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941).

The primary motivation behind the FMIA was the "assuring" of consumers that the nation's meat supply was "wholesome, not adulterated, and properly marked, labeled, and packaged." 21 U.S.C. § 602 (West 2012). One court found that FMIA's "primary purpose . . . is to benefit the consumer and to enable him to have correct understanding of and confidence in meat products purchased." *Fed'n of Homemakers v. Hardin*, 328 F.Supp. 181 (D.C.D.C. 1971). Congress also found that meat not properly labeled (i.e., "misbranded") resulted in "losses to livestock producers and processors of meat and meat food products. . ." 21 U.S.C. § 602 (West 2012). This two-fold purpose—that of communicating to consumers that meat products in the marketplace are wholesome and safe and that of protecting the economic interests of meat producers—was carried out by creating uniform standards. New York's law is at odds with this purpose and frustrates Congress's objectives.

The New York warning states that animal products cause chronic disease. N.Y. AGRIC. & MKTS. § 1000.4 (2010). "Adulterated" meat has been defined in the FMIA as being, among other things, "for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food." 21 U.S.C. § 601(m)(3) (West 2012). The USDA labeling assures customers that beef and pork products are unadulterated, whereas the New York labeling "assures" customers that their meat is unwholesome and adulterated. Consumers are confused, and the New York warning, therefore, directly conflicts with one purpose of the Act.

Likewise, the New York unapproved warning seeks to promote the avoidance of meat products (N.Y. AGRIC. & MKTS. § 1000.4 (2010)), again in direct conflict of Congress's goal of promoting the meat industry. 21 U.S.C. § 602 (West 2012).

II. THE APCIA VIOLATES THE COMMERCE CLAUSE BECAUSE IT DISCRIMINATES AGAINST INTERSTATE COMMERCE BY ADVOCATING THE PURCHASE OF IN-STATE ANIMAL PRODUCTS OVER OUT-OF-STATE ANIMAL PRODUCTS.

Factual findings are reviewed for clear error and legal determinations, de novo. *Am. Booksellers Found. v. Dean*, 342 F.3d 96, 100 (2d Cir. 2003).

A. The APCIA Incidentally Burdens Interstate Commerce by Encouraging the Purchase of In-State Animal Products Over Out-of-State Products.

The APCIA violates the Commerce Clause because it unreasonably burdens interstate commerce and discriminates against out-of-state meat processors. Under the Commerce Clause, Congress retains the power to "regulate Commerce . . . among the several States." U.S. Const., art. I, § 8, cl. 3. The founding fathers created the Commerce Clause to effectuate the "theory that the peoples of the several states must sink or swim together" because only a united economic system would ensure long-term prosperity for the new country. *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935).

The Supreme Court has long noted that a negative component exists within the Commerce Clause, called the dormant Commerce Clause. *Am. Trucking Ass'n, Inc. v. Mich. Pub.*

Serv. Comm'n, 545 U.S. 429, 433 (2005); *Okla. Tax Comm'n v. Jefferson Lines, Inc.*, 514 U.S. 175, 179 (1995); *Bos. Stock Exch. v. State Tax Comm'n*, 429 U.S. 318, 328 (1977); *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 538 (1949); *Baldwin*, 294 U.S. at 522. The dormant Commerce Clause furthers the underlying unification principle of the Commerce Clause because it prohibits individual States from burdening "the flow of commerce across its borders that commerce wholly within those borders would not bear." *Jefferson Lines*, 514 U.S. at 180. In doing so, the dormant Commerce Clause prevents New York from "erecting an economic barrier . . . against competition from [outside] the State." *Dean Milk Co. v. City of Madison*, 340 U.S. 349, 354 (1951).

The APCIA does not facially discriminate against out-of-state animal product producers but it does have discriminatory effects on interstate commerce. The APCIA requires New York retailers to display a placard where animal products are sold that warns consumers about the negative health and environmental effects resulting from the production and consumption of animal products. N.Y. AGRIC. & MKTS. § 1000.4.1 (2010). This placard also advises consumers to make informed choices about animal product consumption and provides a website address—www.informedchoice.ny.gov—where consumers can find further information on the subject. *Id*. Nothing in the text of the statute or the requirements it imposes on New York retailers specifically restricts or inhibits the flow of commerce among the states.

The APCIA treats all animal products equally because both in-state and out-of-state products are subject to the placard requirement. The APCIA does not require animal product producers to place additional labels on animal products and fails to impose any direct financial burden on these producers. The burden falls on New York retailers to properly display the placard in stores where animal products are sold. The APCIA aims to reduce the overall

consumption of animal products in New York regardless of where the products originate. Thus, the APCIA affects both in-state and out-of-state producers in the same manner.

However, the APCIA's labeling requirement directs New York consumers to consult the website www.informedchoice.ny.gov to gather more information about animal product purchases. This website contains detailed information on the health risks associated with consuming animal products, the deleterious environmental hazards posed by modern animal agricultural processes, and the suffering sustained by these farm animals. The website also lists New York farms that employ humane methods of raising animals and are environmentally sustainable. The website only lists New York farms and does not provide consumers with information on any sustainable farms outside of New York. The APCIA explicitly refers consumers to the website and, by only providing the names of New York farms, it encourages in-state purchases over out-of-state purchases. The APCIA thus incidentally discriminates unfairly against out-of-state producers and favors in-state interests over out-of-state interests.

B. The APCIA's Stated Purpose to Protect Public Health, the Environment, and Farm Animals Is Pre-Textual, and the APCIA Violates the Commerce Clause Because It Has Discriminatory Effects on Interstate Commerce.

The Supreme Court recognizes a two-tiered approach to determine the validity of state statutes under the Commerce Clause. *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 579 (1986); *City of Philadelphia v. New Jersey*, 437 U.S. 617, 623-24 (1978). If a state statute directly discriminates against interstate commerce or "when its effect is to favor in-state economic interests over out-of-state interests," the statute is *per se* invalid under the

Commerce Clause. *Brown-Forman*, 476 U.S. at 579; *City of Philadelphia v. New Jersey*, 437 U.S. at 623-24.

However, where a state statute is facially neutral toward interstate commerce and its effects on interstate commerce are only incidental, courts utilize a less strict, balancing approach to determine validity under the Commerce Clause. *Brown-Forman*, 476 U.S. at 579; *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Under this type of review, a court determines "whether the State's interest is legitimate and whether the burden on interstate commerce clearly exceeds the local benefits." *Pike*, 397 U.S. at 142.

1. The APCIA Does Not Serve a Legitimate Public Interest Because the New York Legislature Enacted the Statute to Reduce Government Costs Without Cutting Government Benefits.

In order for the APCIA to be valid under the Constitution, the purpose for which New York passed the APCIA must be a "legitimate local purpose" and its burden on interstate commerce must not outweigh the local benefits of the statute. *Pike*, 397 U.S. at 142. The stated purpose of the APCIA is "to protect the citizens of [the] state by providing and encouraging the dissemination of information about how animal agriculture and the consumption of animal products negatively affects health, the environment, and imposes unnecessary suffering on animals." N.Y. AGRIC. & MKTS. § 1000.3 (2010). However, the stated purpose of the APCIA conflicts with its legislative history. The New York legislature enacted the APCIA on the recommendation of a committee formed to determine various ways to reduce state costs. The committee, entitled "The Long-Term Reduction of Government Costs Without Cutting Benefits

Committee," developed the APCIA after receiving recommendations to place new regulations on the animal agriculture industry.

In response to these recommendations, the Committee forwarded their recommendation to the New York legislature to enact legislation encouraging a "reduction in the consumption of animal products which would in turn reduce the long-term health care and environmental costs to the State." Recognizing that alternative regulatory schemes would take longer to implement, the New York legislature passed the APCIA "to encourage consumer education."

The APCIA is not a protection measure to safeguard New York citizens' health, environment, and farm animals. Rather, it attempts to reduce government costs at the expense of out-of-state interests since only New York farms are recognized as environmentally friendly and humane by the APCIA. The Supreme Court stated that "where simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected." *City of Philadelphia v. New Jersey*, 437 U.S. at 624. New York enacted the APCIA primarily to protect its economy by discouraging animal product consumption that, in turn, would result in fewer health and environment-related state costs. Because the APCIA is an economic protectionist measure with discriminatory effects on interstate commerce, it is *per se* invalid under the Constitution.

2. Alternatively, the APCIA Violates the Commerce Clause Because Less Discriminatory Alternatives to the APCIA Exist.

While the stated purpose of the APCIA is pre-textual to the statute's underlying protectionist motive, this will not deter further analysis in light of states' power to enact legislation in areas of local concern particularly where public health is concerned. *Hughes v.*

Oklahoma, 441 U.S. 322, 336 (1979) (a statute's stated purpose or legislative history is not determinative when defining the purpose of the challenged statute and a court "will determine for itself the practical impact of the law"); *see City of Philadelphia v. New Jersey*, 437 U.S. at 624 (recognizing that "burdens on interstate commerce may be unavoidable when a State legislates to safeguard the health and safety of its people"); *see Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 350 (1977) (noting that states retain a "residuum" of power to regulate local matters of public interest); *H.P. Hood*, 336 U.S. at 531-32 (states retain a "broad power . . . to protect its inhabitants against perils to health or safety . . . by use of measures which bear adversely upon interstate commerce").

When a state enacts a statute 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." *Pike*, 397 U.S. at 142. In *Pike*, the Court held that an Arizona statute mandating a uniform shipping practice for cantaloupes accomplished the legitimate state purpose of "protect[ing] and enhanc[ing] the reputation of [cantaloupe] growers within the state." 397 U.S. at 143.

The "legitimate local public interest" effectuated by the APCIA is the protection of New York citizens, the environment, and the prevention of cruelty to farm animals. N.Y. AGRIC. & MKTS. § 1000.3. Protection of public health and the environment are legitimate local interests. *H.P. Hood*, 336 U.S. at 531-32; *City of Philadelphia v. New Jersey*, 437 U.S. at 624; *see Hunt*, 432 U.S.at 350.

Courts also recognize the prevention of animal cruelty as a legitimate public interest. See *United States v. Stevens*, 130 S.Ct. 1577, 1585 (2010) (noting the prevention of cruelty to animals is a long-held subject of public concern); *Humane Soc. of Rochester and Monroe Cnty.*

for Prevention of Cruelty to Animals, Inc. v. Lyng, 633 F.Supp. 480, 486 (W.D.N.Y. 1986) (finding the prevention of animal cruelty to be a public policy of the United States); *McGill v. Parker*, 582 N.Y.S.2d 91, 96 (1992) (finding the humane treatment of carriage horses a matter of public concern); *Safarets, Inc. v. Gannett Co.*, 361 N.Y.S.2d 276, 280 (1974) (summary judgment granted in a libel action to a newspaper that published an anonymous letter describing the inhumane conditions animals in a pet store were kept in after finding the prevention of cruelty to animals a matter of public interest); *Farm Sanctuary, Inc. v. Dep't of Food & Agric.*, 63 Cal. App. 4th 495, 504 (1998) (finding the humane slaughter of farm animals to be a "matter of public importance").

The protection of New York residents, the environment, and farm animals are legitimate local purposes. Once a legitimate local purpose is identified, a court then considers the nature of the public benefit and whether less discriminatory alternatives exist to effectuate the public benefit. *Pike*, 397 U.S. at 142. Despite finding that the Arizona statute achieved a legitimate public purpose, the *Pike* Court ultimately held that the burden imposed by the statute on Bruce Church, Inc. exceeded the statute's benefits and was unconstitutional. *Pike*, 397 U.S. at 146.

When the burden on interstate commerce imposed by a state statute does not outweigh the local public benefits of the statute, the statute will be found unconstitutional if less discriminatory alternatives to the statute exist. *Maine v. Taylor*, 477 U.S. 131, 138 (1986); *Hughes*, 441 U.S. at 336. In *Taylor*, the Court held Maine's ban on the importation of live baitfish to be constitutional despite barring all out-of-state shipments of baitfish because the ban protected Maine's native fisheries from nonnative threats and no other alternatives existed to effectuate the same purpose. 477 U.S. at 140-41. Conversely, the *Hughes* Court held that conservation of Oklahoma's native minnow population was a legitimate state interest but

Oklahoma's ban on all minnow exports was unconstitutional because it was the most discriminatory means to accomplish its conservation goal. 441 U.S. at 338 (noting that Oklahoma could have restricted the number of minnows caught by fishers or limited the ways in which caught minnows could be disposed of within the state).

Like in *Hughes*, the APCIA's burden on interstate commerce is ultimately intolerable because less discriminatory alternatives to the APCIA exist. New York could accomplish the purposes of the APCIA—protection of the public health, environment, and farm animals—without discriminating against interstate commerce. As the District Court correctly noted, New York could include out-of-state farms in its list of environmentally sustainable and humane farms on www.informedchoice.ny.gov and support the APCIA's goal of educating consumers. The District Court also found New York could protect its citizens, environment, and farm animals and avoid discriminating against interstate commerce by drafting legislation that does not affect interstate commerce.

While Appellants argue that the addition of out-of-state farms on the New York website would substantially increase the costs of implementing the APCIA, Appellants forget that New York could have foregone listing any farm names on their website while still providing general information on the dangers industrial agricultural processes pose to the public, environment, and farm animals. Additionally, the committee that recommended the APCIA to the New York legislature also submitted nineteen other recommendations in the field of animal agriculture which were also directed towards protecting the public health and environment. The New York legislature chose to enact the APCIA despite the existence of non-discriminatory alternatives. The District Court correctly ruled that the APCIA violates the Commerce Clause because less

discriminatory alternatives are available to protect the public health, environment, and farm animals.

CONCLUSION

New York's point-of-sale warning requirement is "labeling" within the meaning of the FMIA, and this labeling requirement is "in addition to, or different than" the labeling requirements of the FMIA. Therefore, the New York law is preempted by the FMIA. Even if it were not expressly preempted, it is impliedly preempted because it is in direct conflict with the federal law and obstructs the federal government's ability to fulfill the purposes of the Act. The APCIA cannot stand under the Commerce Clause. Despite facial neutrality, the APCIA imposes an undue burden on interstate commerce.

Furthermore, under the APCIA, the placard New York animal product retailers must place near where such products are offered for sale explicitly refers consumers to a state-sponsored website that only lists New York farms as environmentally sustainable and humane. By expressly encouraging New York residents to purchase in-state animal products over out-of-state products, the APCIA discriminates against all out-of-state animal products. Furthermore, the New York legislature did not enact the APCIA for a permissible state purpose such as the protection of public health. Rather, the APCIA is a cost-saving measure in the guise of a public health law. Because less discriminatory alternatives were available to the New York legislature capable of effectuating the protection of public health, the APCIA fails the Pike balancing test and violates the Commerce Clause.

We ask this court to sustain the judgment below.