Case No. CV 11-55440 (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

Appeal from United States District Court for the Southern District of New York

Appellants' Appeal from Judgment Granting Appellee's Motion for Summary Judgment

Team #12

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I. ISSUES PRESENTED

This case presents two issues on appeal:

1) Is the Animal Products Consumer Information Act preempted by the Federal Meat Inspection Act when the ambiguous term "accompanying" is properly interpreted under canons of statutory construction?

2) Does APCIA violate the Commerce Clause when it is not preempted and its local benefits exceed its incidental effects on interstate commerce?

II. OVERVIEW OF CASE

a. Procedural History

In 2010 New York passed the Animal Products Consumer Information Act ("APCIA). N.Y. Agic. & Mkts. Law § 1000. Shortly afterward the National Meat Producers Association ("NMPA") sued, seeking a declaratory judgment and injunctive relief. NMPA alleges APCIA is unconstitutional because it violates the Supremacy Clause and the Commerce Clause. NMPA moved for summary judgment under Fed. R. Civ. P. 56 and the District Court granted its motion.

The Court held APCIA's placard requirement constitutes labeling under FMIA but it was not preempted. The Court found APCIA violates the Commerce Clause because its website promotes in-state commerce at the expense of interstate commerce and there were more effective options available for New York's legislature to further its policies. Defendants have appealed the grant of summary judgment because there are genuine issues of material fact.

This Court entered a briefing order on September 15, 2012. This is appellants' response to that order.

b. Jurisdiction

Jurisdiction is proper under 28 U.S.C.A. § 1292 and 21 U.S.C.A. § 674.

III. FACTS

The Federal Meat Consumer Information Act was enacted to regulate "[u]nwholesome, adulterated, or misbranded meat or meat food products" that pose a risk to consumers. 21 U.S.C.A. § 602. It expressly states "…labeling…requirements in addition to or different than, those made under this chapter may not be imposed by any State…" 21 U.S.C.A. § 678. In 2010 the New York Legislature enacted the Animal Products Consumer Information Act. Its purpose is to to "…protect the citizens of this 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. Law §1000.3.

APCIA was enacted under the state's police power after exhaustive legislative hearings that included 1,000 hours of expert testimony. These experts and those testified before the District Court linked consumption of animal products to serious health risks, environmental damage, and animal cruelty. New York launched a dynamic website that provides consumers with information about these effects and required retailers within New York to display a placard informing consumers about the website.

The National Meat Producers Association, a powerful lobbying group, sued, alleging APCIA violates the Commerce Clause by imposing an undue burden on interstate commerce. NMPA also alleged APCIA violates the Supremacy Clause because it is preempted by FMIA. The District Court erroneously granted summary judgment in favor of NMPA. This appeal

followed to permit this Court to correct the lower court's error because genuine issues of material exist and must be resolved.

IV. SUMMARY OF ARGUMENT

The District Court erred when it held APCIA's placard requirement constitutes labeling under FMIA because it failed to apply appropriate canons of statutory interpretation. Its interpretation was contrary to express intent of Congress and rendered a provision of FMIA useless. Under appropriate canons of statutory construction, APCIA's placard is not a label and the District Court impermissibly distended the boundaries of FMIA. Because APCIA does not fall within the purview of FMIA, it is not preempted by it. In the alternative, APCIA is not preempted because express, implied, field, and/or conflict preemption do not exist.

APCIA is not facially discriminatory to out-of-state commerce. Under the *Pike* balancing test, its local benefits substantially outweigh its incidental effect on commerce. The website is a dynamic source of information reasonably tailored to effectuate the educational intent of APCIA. APCIA survives constitutional analysis under the Commerce Clause.

V. ARGUMENT

a. STANDARD OF REVIEW

A Court of Appeals reviews a grant of summary judgment *de novo*. *Holcomb v. Powell*, 433 F.3d 889, 897 (D.C. Cir. 2006). It applies the same legal standards as those applied by district court. *McKnight Const. Co., Inc. v. Dep't of Defense,* 85 F.3d 565, 569 (11th Cir. 1996). On appeal the movant for summary judgment always bears burden of production. *F.D.I.C. v. Giammettei*, 34 F.3d 51, 54 (2d Cir. 1994).

The Court of Appeals' review of summary judgment is also plenary. *Levy v. F.D.I.C.*, 7 F.3d 1054, 1056 (1st Cir. 1993). The court examines summary judgment record in light most

friendly to summary judgment loser and indulges all reasonable inferences in that party's favor. *Nat'l Amusements, Inc. v. Town of Dedham*, 43 F.3d 731, 735 (1st Cir. 1995) (*cert. denied*). The Court of Appeals is not bound by the findings of the lower court and must undertake an independent review of the entire record. *E. P. Hinkel & Co., Inc. v. Manhattan Co.*, 506 F.2d 201, 204 (D.C. Cir. 1974).

b. APCIA IS NOT PREEMPTED BY FMIA

1. APCIA's Placard Requirement Does Not Constitute Labeling Under FMIA

i. The Court Erred In Its Statutory Construction of "Accompanying"

The Federal Meat Inspection Act expressly states "…labeling…requirements in addition to or different than, those made under this chapter may not be imposed by any State…" 21 U.S.C.A. § 678. Under 21 U.S.C.A. 601(p): "The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." Whether APCIA's placard requirement constitute labeling therefore hinges upon the definition of "accompanying." The District Court found "accompanying" ambiguous, R. at 12, and interpreted it to mean "any printed material displayed with the intent of conveying information about the product." *Id*. This interpretation is erroneous.

Under the established interpretative canons of *noscitur a sociis* and *ejusdem generis*, " '[w]here general words follow specific words in a statutory enumeration, the general words are construed to embrace only objects similar in nature to those objects enumerated by the preceding specific words.' " *Circuit City Stores, Inc. v. Adams*, 532 U.S. 105, 114-115, 121 S.Ct. 1302, 149 L.Ed.2d 234 (2001). These canons often applied where a word is capable of

many meanings "in order to avoid the giving of unintended breadth to the Acts of Congress." *Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307, 81 S.Ct. 1579, 6 L.Ed.2d 859 (1961).

In the section immediately preceding § 601(p), FMIA defines the term "label." It means "…a display of written, printed, or graphic matter upon the *immediate container* (not including package liners) of any article." 21 U.S.C.A. § 601(o) (*emphasis added*). The ambiguous language of § 601(p) was preceded by clear language that limited a label to material printed directly on the product or its container. Under *noscitur a sociis*, constructing § 601(p) should have been limited to the specific language of § 601(0). "Labeling" properly refers only to printed material affixed to the product or its packaging. By expanding the definition of labeling to include all printed material, the District Court gave unintended breadth to FMIA. Because placards do not properly fall within the concept of labeling for FMIA, APCIA's placard is not within its purview.

ii. The Court Contravened Congressional Intent In Its Statutory Construction

The primary concern of statutory construction is Congress' intent. *United States v. N. E. Rosenblum Truck Lines*, 315 U.S. 50, 53, 62 S. Ct. 445, 448, 86 L. Ed. 671 (1942). The Supreme Court stated "It is well-settled doctrine of this Court to read a statute, assuming that it is susceptible of either of two opposed interpretations, in the manner which effectuates rather than frustrates the major purpose of the legislative draftsmen." *Shapiro v. United States*, 335 U.S. 1, 31, 68 S. Ct. 1375, 1391, 92 L. Ed. 1787 (1948).

The District Court interpreted "accompanying" to imply Congress intended for FMIA to exclude states from imposing additional requirements on meat products. This is at odds with 21 U.S.C.A. § 661. That provision details ways for the Secretary of Agriculture to work with

states while they develop their own laws in furtherance of FMIA's objectives. The District Court's interpretation is also directly at odds with 21 U.S.C.A. § 602, which states: "This chapter shall not preclude any State or Territory or the District of Columbia from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter."

Through these provisions, Congress left no ambiguity about its intent to work cooperatively with states. Congress intended to permit states to legislate independently, so long as they do not undermine FMIA in doing so. Congress emphasized it was concerned with "[u]nwholesome, adulterated, or misbranded meat or meat food products" that posed a risk to consumers. 21 U.S.C.A. § 602.

This not synonymous with APCIA's intent to promote independent consumer research into health, environment, and animal cruelty concerns. The District Court recognized FMIA and APCIA do not have the same legislative intent. R. at 14. Despite this, the Court interpreted the ambiguous provision of FMIA to extend its reach into a law unrelated to its own purpose. A narrower finding that placards are not labels would have maintained Congress' statutory scheme without bloating the boundaries of FMIA regulation. This contradicts the Supreme Court's emphasis on construction in sync with legislative intent.

Assuming *arguendo*, this Court finds APCIA's intent is synonymous with that of FMIA because the New York legislature was concerned with the content of meat products (i.e. flu virus, antibiotics used in Commercial Animal Feeding Operations (CAFO's), and other contaminants related to commercially kept livestock), the District Court's construction is still at odds with Congressional intent. If both APCIA and FMIA regulate the content of meat products, this is in keeping with the cooperative policies of 21 U.S.C.A. §§ 661 and 602.

FMIA regulation of APCIA contravenes Congress' intent because states are supposed to legislate and APCIA is exactly the type of supplemental legislation meant to be embraced. Alternatively, this contradicts Congress' intent because these laws regulate two completely distinct areas. Under either assumption the District Court's holding is error.

The District Court's expansion of FMIA constitutes impermissible judicial legislation. A judge's role is to interpret and apply the statute, not to rewrite it or undertake judicial legislation. *In re Hannah*, 316 B.R. 57, 60 (Bankr. D.N.J. 2004). The lower court's actions are offensive to the separation of powers and to the power given exclusively to Legislature. Finally, expanding FMIA so it interferes with statutes unrelated to its purpose upsets the balance of federalism approved by Congress. Congress intended for states to participate in developing state statutes to supplement FMIA's objectives. It did not intend for FMIA to become fat on the meat of statutes with only an incidental connection to it. As the court in *Owasso Indep. Sch. Dist. No. I-011 v. Falvo,* 534 U.S. 426, 432, 122 S. Ct. 934, 939, 151 L. Ed. 2d 896 (2002), stated, "We would hesitate before interpreting [a] statute to effect such a substantial change in the balance of federalism unless that is the manifest purpose of the legislation." This was not Congress' purpose, as it expressly declared in several of FMIA's provisions.

The ruling of the District Court should be overruled.

iii. The District Court Erred When It Interpreted "Accompanying" In A Manner That Rendered The Provision Useless

The District Court's definition of "accompanying" is unworkable because it is substantially overbroad and renders the provision useless. This total emasculation of the "accompanying" language of § 601(p) results from improper statutory construction.

The cardinal principle of statutory construction is to save and not to destroy. *United States v. Menasche*, 348 U.S. 528, 538-39, 75 S. Ct. 513, 520, 99 L. Ed. 615 (1955). Courts should not render statutes "nugatory" through construction. *United States v. Tohono O'Odham Nation*, 131 S. Ct. 1723, 1730, 179 L. Ed. 2d 723 (2011). "It is our duty to give effect, if possible, to every clause and word of a statute." *Inhabitants of Montclair Tp. v. Ramsdell*, 107 U.S. 147, 152, 2 S.Ct. 391, 395, 27 L.Ed. 431 (1883).

The District Court determined "accompanying" means "any printed material displayed with the intent of conveying information about the product." R. at 12. Under this definition all printed information, including price, in-store sales, and advertising material, are unacceptable and violative of FMIA. This leaves retailers with two choices, to not sell meat products at all, or provide sales details to each customer orally. Further, because FMIA is a federal regulation, this definition would apply nationwide, as would its absurd results.

This is not what Congress intended because it would destroy all interstate commerce for meat products if followed or result in widespread violation if ignored. There is danger in this second option because widespread noncompliance could easily infect other provisions of FMIA. In *Armstrong Paint & Varnish Works v. Nu-Enamel Corp*., 305 U.S. 315, 333, 59 S.Ct. 191, 200, 83 L. Ed. 195 (1938), the Supreme Court noted it is a longstanding judicial function to construe statutes "so as to avoid results glaringly absurd."

The District Court's interpretation is contrary to the cardinal principal to save and not destroy a statute during construction. It renders § 601(p) "glaringly absurd" and gives no legitimate effect to that provision. This appeal should be granted and the District Court overruled.

2. APCIA IS NOT PREEMPTED BY FMIA UNDER THE SUPREMACY CLAUSE

APCIA's placard is not a label so the statute does not fall within the purview of FMIA. Because FMIA does not apply to APCIA, it also does not preempt it. If this Court finds to the contrary (that the placard is a label subject to FMIA regulation), APCIA is still not preempted under the judicially recognized types of preemption.

Supremacy Clause analysis starts with the basic assumption that Congress did not intend to displace state law. *Bldg. & Const. Trades Council of Metro. Dist. v. Assoc. Builders & Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 224, 113 S.Ct. 1190, 122 L.Ed.2d 565 (1993). This presumption is especially strong in areas within the state's historic police powers. *Boro Gun Club, Inc. v. City of New York*, 97 F.3d 681, 687 (2d Cir. 1996). The burden of overcoming this presumption is on the party seeking preemption. *Young v. Am. Cyanamid Co.*, 786 F. Supp. 781, 782 (E.D. Ark. 1991). Courts will use rules of construction to avoid finding conflict if possible. *Conference of State Bank Sup'rs v. Conover*, 710 F.2d 878, 882 (D.C. Cir. 1983). If preemption is found, state law is displaced only "to the extent that it actually conflicts with federal law." *Dalton v. Little Rock Family Planning Services*, 516 U.S. 474, 476, 116 S. Ct. 1063, 1064, 134 L. Ed. 2d 115 (1996).

There are four types of preemption. Express preemption entails an express Congressional directive to supersede state law. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 112 S.Ct. 2031, 119 L.Ed.2d 157 (1992). Implied preemption results from an inference that Congress intended to preempt state law to achieve its objective. *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941). Field preemption comes from a determination that Congress intended to remove an entire area from state regulatory authority. *Fidelity Fed. Savs. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141, 153, 102 S.Ct.

3014, 3022, 73 L.Ed.2d 664 (1982). Conflict preemption occurs when federal and state law actually conflict. *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 143, 83 S.Ct. 1210, 1218, 10 L.Ed.2d 248 (1963). Each is discussed in turn.

i. Congress Did Not Expressly Preempt APCIA

Express preemption is one manner by which federal law may preempt state law. Absent a "clear and manifest" expression of Congress' intent to override state common law, express preemption does not exist. *Welsh By & Through Welsh v. Century Products, Inc.*, 745 F. Supp. 313, 316 (D. Md. 1990).

The District Court found APCIA and FMIA regulate two different areas. FMIA is concerned with "[u]nwholesome, adulterated, or misbranded meat or meat food products" that posed a risk to consumers. 21 U.S.C.A. § 602. APCIA, in contrast, is designed to promote consumer research into health, environment, and animal cruelty concerns. R. at 14. At no point are the objectives of APCIA mentioned in FMIA's provisions so it was not expressly preempted.

If this Court adopted a different view, that APCIA and FMIA share a common intent to regulate consumer information about the content of meat products, APCIA is not expressly preempted. Again, Congress explicit in its enactment of multiple provisions calling for supplemental and parallel state regulation. *See* 21 U.S.C.A. §§ 661, 602. Under either view, New York's law has not been expressly preempted.

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ii. Implied Preemption Is Inappropriate For An Area Traditionally Occupied By The State Pursuant To Its Police Power

In a field traditionally occupied by the states, there is a fundamental assumption state police powers were not intended to be superseded by a federal law. This is true unless preemption is the "clear and manifest purpose" of Congress. *Wyeth v. Levine*, 555 U.S. 555, 565, 129 S. Ct. 1187, 1194-95, 173 L. Ed. 2d 51 (2009). A "clear and manifest purpose" is the same standard used to determine whether Congress expressly preempted state law. Read together, these holdings show implied preemption is unavailable when that law exercises state police power.

APCIA regulates consumer education about health, environment, and animal cruelty. These areas fall squarely within scope of New York's police power to regulate the health, safety, and morals of its citizens. Because APCIA operates in an area historically occupied by the State, Congress must meet the clear and manifest purpose standard. The language of FMIA shows a directly contradictory position. Because this standard has not been met, APCIA has not been preempted. Implied preemption is inappropriate because New York's law was enacted under its police power and is afforded deference, even in the face of federal legislation.

iii. Congress Has Not Pervasively Legislated The Regulatory Field To Preclude Additional State Regulation

Congress can preempt state law if the scheme of federal regulation in a field is so pervasive as to "make reasonable the inference that Congress left no room for States to supplement it." *Tenneco, Inc. v. Sutton*, 530 F. Supp. 411, 434 (M.D. La. 1981). Comprehensiveness alone cannot justify preemption, there must also be Congressional intent to do so. *Envtl. Encapsulating Corp. v. City of New York*, 855 F.2d 48, 58 (2d Cir. 1988).

FMIA, while thorough, is not so pervasive it leads to a conclusion Congress did not intend for states to create supplement legislation. By its terms, it encourages states to participate in legislating this field. 21 U.S.C.A. § 661. Because FMIA is not pervasive to the point of excluding states from enacting additional provisions, and because Congress has expressly disavowed this intent, field preemption does not apply.

iv. APCIA Is Not In Direct Conflict With FMIA and Does Not Obstruct Congress' Objectives

Conflict preemption occurs where compliance with both federal and state regulations is a physical impossibility or where state law is an obstacle to the accomplishment of Congress' objectives. *Frank Bros., Inc. v. Wisconsin Dept. of Transp.*, 409 F.3d 880, 894 (7th Cir. 2005). To determine if a state law is an obstacle, courts look at the relationship between the statutes. "... [T]he crucial inquiry is whether [state law] differs from [federal law] in such a way that achievement of the congressional objective ... is frustrated." *California v. ARC America Corp.*, 490 U.S. 93, 100-01, 109 S.Ct. 1661, 104 L.Ed.2d 86 (1989).

As the District Court found, APCIA and FMIA regulate different areas so they are not in conflict with each other. Because APCIA does not impinge upon FMIA, it does not frustrate Congress' purpose. These statutes are akin to two interlocking jigsaw puzzle pieces. They do not invade each other's province and they click together to form a more comprehensive picture of meat product safety.

Assuming, *arugendo*, APCIA and FMIA overlap to a small degree, Congress' intent was for states to enact legislation in this field. This would mean APCIA furthers Congress' intent because it is just such additional legislation. Under either scenario conflict preemption does not apply because there is no conflict or obstruction of Congressional objectives.

THE DISTRICT COURT ERRED WHEN IT HELD APCIA'S PLACARD REQUIREMENT CONSTITUTED LABELING UNDER FMIA. IT FURTHER ERRED IN ITS STATUTORY CONSTRUCTION BECAUSE IT CONTRAVENED CONGRESSIONAL INTENT AND RENDERED 21 U.S.C.A. § 601(P) USELESS. BECAUSE THE APCIA PLACARD IS NOT A LABEL, IT IS NOT PREEMPTED BY FMIA. ALTERNATIVELY, APCIA IS NOT PREEMPTED BECAUSE EXPRESS, IMPLIED, FIELD, AND CONFLICT PREEMPTION DO NOT EXIST. FOR THESE REASONS, THIS COURT SHOULD GRANT THIS APPEAL AND OVERTURN THE DISTRICT COURT'S GRANT OF SUMMARY JUDGMENT IN FAVOR OF APPELLEES.

C. APCIA DOES NOT VIOLATE THE COMMERCE CLAUSE

Courts use a two-step analysis to evaluate constitutionality under the dormant Commerce Clause. *Int'l Dairy Foods Ass'n v. Boggs*, 622 F.3d 628, 644 (6th Cir.2010). The first step involves determining whether a state statute directly discriminates against interstate commerce or whether its effect favors in-state commerce over out-of-state commerce. *Brown–Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S.573, 106 S.Ct. 2080 (1986). "[T]he critical consideration is the overall effect of the statute on both local and interstate activity." *Brown–Forman*, 476 U.S. at 579, 106 S.Ct. 2080.

The plaintiff bears the initial burden of proof to show the state regulation is discriminatory. *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328,338, 128 S.Ct. 1801 (2008). If the plaintiff satisfies this burden, then "a discriminatory law is virtually *per se* invalid and will survive only if it advances a legitimate local purpose that cannot be adequately served by reasonable nondiscriminatory alternatives." *Oregon Waste Systems, Inc. v. Dep't of*

Environmental Quality of State of Or., 511 U.S. 93, 114 S.Ct. 1345 (1994). If the law is not discriminatory it will upheld unless the burden on interstate commerce is "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc.,* 397 U.S. 137, 142, 90 S.Ct. 844 (1970).

In concluding APCIA violates the Commerce Clause, the District Court found the statute was not facially discriminatory but the objective behind the placard requirement could have been served by non-discriminatory alternatives. The Court suggested New York could have achieved its objective by including out-of state-farms on the website, or alternatively, not listed any specific farms at all. It had serious concerns about the website advocating for in-state business at the expense of out-of-state businesses. The Court's findings are in error and the analysis below will follow the steps outlined above to evaluate constitutionality under the Commerce Clause.

1. APCIA Is Not Facially Discriminatory

APCIA, Exhibit 1, contains no language that targets out-of-state commerce. Its express intent is to "…protect the citizens of this 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. Law §1000.3. This falls squarely within New York's police power. The remaining provisions also do not refer to out-of-state commerce. APCIA is facially devoid of intent to discriminate against out-of-state commerce. Because appellees did not meet their initial burden, APCIA is not *per se* invalid.

2. Local Putative Benefits Outweigh APCIA's Incidental Effect On Commerce

The District Court found APCIA's local putative benefits did not justify its effect on commerce. This in the face of the expert testimony heard below. APCIA was enacted on the advice of several committees impaneled to investigate ways to save New York's financial resources. R. at 3. These committees listened to over 1,000 hours of expert testimony before advising the legislature. R. at 3. They ultimately recommended a plethora of cost-saving measures, one of which was APCIA. *Id*. The New York legislature did not act on a whim or on a desire to indulge protectionist economic policies. It is inappropriate for the federal judiciary to overturn the informed decision of the legislature, whose judgments are supported by voters, to substitute in its own policy decisions. A judge's role is to interpret and apply the statute, not to rewrite it or undertake judicial legislation. *In re Hannah*, 316 B.R. 57, 60 (Bankr. D.N.J. 2004). New York's legislature, upon careful study, enacted APCIA because it provided substantial local benefits by saving the strained financial resources of the state. This finding should not be taken lightly.

Dr. Bernard Rollin supplied the District Court with a 21-page affidavit outlining the dangers associated with the beef, swine, dairy, veal, and poultry industries. R. Addendum B at 1-21. His expert testimony, given under oath, is each of these industries present significant animal cruelty risks. As the District Court notes, animal welfare is an important public interest long-recognized . *United States. v. Stevens*, 130 S.Ct. 1577, 1585 (2010). *See also McGill v. Parker*, 582 N.Y.S.2d 91, 96 (1992).

The Court heard expert testimony from Dr. T. Collin Campbell. He testified a reduction in consumption of meat products would prevent, and often, reverse heart diseases, cancer, type 2 diabetes, stroke and hypertension. R. at 4. He also testified about the significant

link between infection diseases and animal agriculture. *Id*. The long-term cost-saving effect of curtailing the spread of infectious disease is substantial. *Id*. This assertion was supported by Dr. Michael Gregor when he testified (both in front of the New York Committees and via affidavit for the District Court), that flu mutations are increasing and this directly coincides with a rise in swine and poultry production. R. at 7.

It is unfathomable for the District Court to conclude APCIA, a non-discriminatory statute, poses a greater risk to interstate commerce than uninformed meat consumption does to the citizens of New York. The public policy behind the Commerce Clause prevents exclusionary economic protectionism by states. The Commerce Clause does not mandate increased consumerism at all costs. New York wisely decided the health of its citizens would not be the price tag of the NMPA turning a profit. The District Court failed in its analysis of the *Pike* balancing test and this Court can correct the lower court's mistake.

3. New York's Legislature Acted Within Its Province And The Means Chosen Are Reasonable To Effectuate Its Intent

New York acted with a precise goal in mind when it enacted APCIA, educating consumers about consumption of meat products. The most fundamental way to educate a person is to provide him/her with a source of information. APCIA did that by establishing the website at N.Y. Agric & Mkts. Law §1000.4(1). The District Concern with the content of the website is misplaced in its constitutional analysis of APCIA because it ignores the fundamental dynamic nature of a website. APCIA does not mandate in its express terms what the content of the website will be. The website currently contains only New York farms known by the State to be healthy options when consuming meat products. There is nothing in the statute to suggest this content will not be updated, nor that it *shall* exclude out-of-state farms.

This conclusion, generated by the Court itself, should not have been considered in the analysis of whether New York chose a reasonable means to achieve its stated purpose. The legislature's goal was to educate its citizens and reduce long-term health costs, animal cruelty, and environmental damage. It provides a dynamic information source capable of being updated, supplemented, and changed. This is the epitome of a reasonable means to achieve consumer education. Because the Court improperly inserted an unsubstantiated conjecture about the website, its analysis was flawed.

APCIA IS NOT FACIALLY DISCRIMINATORY, ITS LOCAL BENEFITS FAR OUTWEIGH ITS INCIDENTAL EFFECTS ON COMMERCE, AND THE MEANS EMPLOYED BY THE NEW YORK LEGISLATURE WERE REASONABLE TO ACHIEVE ITS STATED EDUCATIONAL PURPOSE. FOR THESE REASONS, APCIA DOES NOT VIOLATE THE COMMERCE CLAUSE AND IS CONSTITUTIONAL. THE DECISION OF THE DISTRICT COURT MUST THEREFORE BE REVERSED.

VI. CONCLUSION

New York's Animal Product Consumer Information Act is not preempted by the Federal Meat Inspection Act because its placard requirement does not constitute labeling subject to FMIA regulation. Alternatively, APCIA is not preempted because express, implied, field, and conflict preemption do not exist. Further, APCIA is not discriminatory to out-of-state commerce, its local benefits outweigh its incidental effects on interstate commerce, and the website chosen by the New York Legislature is a reasonable means to achieve consumer education. Because APCIA does not violate the Supremacy Clause or the Commerce Clause, the District Court erred in granting

summary judgment in favor of appellees. Appellants respectfully request this Court grant this appeal and overrule the findings of the lower court.

Respectfully submitted this 11th day of January, 2013,

/s/ Team #12

Team #12

Attorneys for Appellants

Exhibit 1

ADDENDUM A to MEMORANDUM OPINION

N.Y. Agric. & Mkts. Law & 1000

SECTION 1. SHORT TITLE

This Act may be cited as the ''Animal Products Consumer Information Act''.

SECTION 2: DEFINITION

"Animal products" refers to meat, fish, diary, and eggs.

SECTION 3: STATEMENT OF PURPOSE

This Act is designed to protect the citizens of this 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.

SECTION 4: LABELLING REQUIREMENT

(1) The following language must be prominently displayed wherever animal products intended for human consumption are offered for sale: "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."

(2) The identification shall consist of a sign not less than 18 by 24 inches and printed in letters not less than 1 1/2 inches high. All letters in the sign shall be in red on a yellow background.

(3) When offered for sale from a retail sales display, vending machine, or bulk container, the required placard shall be clearly visible to a customer viewing the animal products.

(4) When offered for sale in a food service establishment or other public eating place, the required information must be on a placard as described above, clearly visible to all customers, or printed on a menu in type and lettering similar to, and as prominent as, that normally used to designate the serving of other food items.

SECTION 4: PENALTY.

The punishment for a violation of section 4 is a fine of $1,000 per day.