3:14-cv-55440 MJC (ABC)

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

AMERICAN SLAUGHTERHOUSE ASSOCATION,

Appellant,

v.

UNITED STATES DEPARTMENT OF AGRICULTURE; and TOM VILSACK, in his official capacity as Secretary of Agriculture,

Appellees.

On Appeal from the United States District Court for the District of Massachusetts

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BRIEF FOR APPELLEES

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QUESTIONS PRESENTED

I. Does the Meat Eaters' Right to Know Act ("the MERK Act") violate the First Amendment?

II. Can ASA pursue a facial challenge to the MERK Act on Fourth Amendment grounds? If so, does the MERK Act violate the Fourth Amendment?

STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is an appeal by the American Slaughterhouse Association ("ASA") of the opinion of the District Court for the District of Massachusetts for the United States Department of Agriculture and Secretary Vilsack (collectively "USDA").

II. COURSE OF PROCEEDINGS

The District Court. Appellant, the American Slaughterhouse Association, a national trade association of slaughterhouses, sued for declaratory judgment and injunctive relief contending that the Meat Eaters' Right to Know Act ("MERK Act"), which requires slaughterhouses to install video cameras on their premises and stream the live footage on their companies' websites, is unconstitutional on two grounds: (1) that it violates the First Amendment because it compels speech and (2) that it violates the Fourth Amendment because it authorizes unreasonable government searches. R. at 1. The United States Department of Agriculture and Secretary Vilsack moved to dismiss ASA's complaint under Federal Rule of Civil Procedure 12(b)(6). R. at 1. The district court granted the USDA's motion to dismiss. R. at 15. The district court determined that *Zauderer's* reasonable relationship test applied to the live-streaming requirement, which it found to promote the government's substantial interests in animal welfare and consumer information. R. at 10. The posting requirement was held to be permissible under the First Amendment. R. at 10. The district court held that the MERK Act meets the *Burger* test for warrantless administrative searches, and consequentially that the ASA failed to state a claim under the Fourth Amendment. R. at 15.

III. DISPOSITION BELOW

The decision and order of the District Court for the District of Massachusetts is unreported and set out in the record. R. at 3–15.

STATEMENT OF FACTS

To protect the public interest in the humane treatment and slaughter of animals intended for human consumption Congress passed the MERK Act in March 2012. R. at 1. The MERK Act is intended to strengthen the enforcement efforts of the USDA, specifically of the Humane Methods of Slaughter Act ("HMSA") (7 U.S.C. §§ 1901–1907 (1958)). H.R. REP. NO. 112–666 at 3 (2012). The MERK Act requires slaughterhouses under federal inspection to install and maintain video cameras in all parts of facilities related to the processing of live animals and their carcasses. R. at 2.

The MERK Act also requires that a live-stream of video footage from such cameras be published on the websites of the companies or parent companies that own the slaughterhouses. R. at 2. Pursuant to the Freedom of Information Act (5 U.S.C. § 552), slaughterhouse facilities which do not maintain websites must provide the live-streamed video to the USDA, which shall make the footage accessible to the public. R. at 2. Slaughterhouses have three years to come into compliance with the law, which becomes effective March 2, 2015. R. at 2.

The MERK Act was passed in response to "an avalanche of concern and interest [among citizens] in the way animals are treated . . . in slaughterhouses." *Introducing the Meat Eaters' Right to Know Act Before the House of Representatives,* 112th Cong. 2 (2012) (Statement of Rep. Panop Kahn) at 1. By providing video footage of slaughterhouses, consumer information is increased as to which companies are in compliance with the HMSA, as there is no labeling system on meat and other animal products related to humane methods of slaughter. *Id.*

The legislation was created in response to calls from USDA inspectors seeking stronger tools to aid them in the enforcement of the HMSA. *Id.* Specifically, video surveillance of slaughterhouses would facilitate more thorough enforcement. H.R. REP. NO. 112–666 at 4. USDA inspectors are frequently engaged in food safety inspection and cannot simultaneously monitor for HMSA compliance due to their limited staff. Rep. Kahn at 1. Using video surveillance would provide for greater enforcement ability and create stronger incentives for compliance. H.R. REP. NO. 112-666 at 3–4. This incentive is reinforced by imposing significant civil liability for failure to comply. Meat Eaters' Right to Know Act § 5. Weaker penalties have proven ineffective at curbing the most egregious cruelty and mistreatment of animals. Rep. Kahn at 1.

SUMMARY OF THE ARGUMENT

The United States Congress passed the MERK Act to address two substantial interests of the state which are currently unmet. First, the live-streaming requirement empowers the USDA to comprehensively enforce HMSA with the desired result of reducing cruelty to animals in slaughterhouses. Second, the live-streaming requirement informs consumers which meat producers comply with HMSA, allowing them to make more cognizant consumer decisions. The MERK Act is constitutional in its entirety.

I.

The MERK Act's live-streaming requirement does not violate the First Amendment. It is unnecessary for this court to reach First Amendment analysis as the live-streaming requirement merely compels conduct and does not compel speech. *D'Amario* guides this court to find the live-streaming requirement to compel only conduct, but if it concerns speech at all, it concerns only government speech. *D'Amario v. Providence Civic Ctr. Auth.*, 639 F. Supp. 1538, 1541

(D.R.I. 1986), *aff'd without opinion*, 815 F.2d 692 (1st Cir. 1987). The government may speak through private parties and there is adequate protection that no observer would believe the speech to originate from ASA.

Even if the MERK Act is found to compel commercial speech on behalf of ASA, it remains constitutional under the *Zauderer* reasonable relation standard. Typically strict scrutiny applies to compelled speech, but *Zauderer* is controlling because the live-streaming requirement compels disclosure of purely factual and uncontroversial information, triggering only the need for a reasonable relation to the government's substantial interests. Further, commercial speech is afforded less scrutiny than non-commercial speech. The USDA has substantial interests in preventing cruelty to animals and in informing consumers about meat production. The MERK Act is reasonably related to these interests.

The live-streaming requirement remains constitutional, even if not analyzed under *Zauderer*. The appropriate standard for commercial disclosures, as opposed to other forms of compelled speech, is the intermediate scrutiny standard as articulated in *Central Hudson*. Under the *Central Hudson* standard the live-streaming requirement survives First Amendment scrutiny as it directly advances substantial government interests and is no more extensive than necessary.

II.

The MERK Act is constitutional under the Fourth Amendment. First, ASA cannot pursue a facial challenge to the Act, because although it is a search, it meets the Supreme Court's test for warrantless administrative searches—reasonableness. ASA's members are parts of an intensely regulated industry, each member already subject to USDA inspection. They therefore have no heightened expectation of privacy to thwart the search, and the search is entirely reasonable. The ASA's claims are not yet ripe for review and this court should wait, according

to *Sibron*, to base any decision upon concrete facts, none of which exist today. *Sibron v. New York*, 392 U.S. 40, 82 (1968).

The Ninth Circuit and the Sixth Circuit are split as to whether a statute can facially violate the Fourth Amendment. The Sixth Circuit found a regulation not susceptible to a facial challenge under the Fourth Amendment because the claim lacked concrete facts. The Ninth Circuit recently permitted a facial challenge because the search was deemed unreasonable and afforded no opportunity for pre-compliance judicial review. The Sixth Circuit is correct.

However, even if ASA can bring a facial challenge, the MERK Act does not violate the Fourth Amendment as the live-streaming requirement satisfies the three-prong standard established in *Burger*. The standard is used to determine whether a warrantless search of a closely regulated industry is constitutional. The first prong of the test is satisfied because state has substantial interests in preventing animal cruelty and informing consumers about meat production. Second, the live-streaming requirement is necessary to further the state's regulatory scheme because the current provisions in place have proven ineffective at accomplishing the government's interests. Finally, the live-streaming requirement provides a constitutionally adequate substitute for a warrant because ASA has sufficient notice.

STANDARD OF REVIEW

On a motion to dismiss, the court has "jurisdiction to consider . . . legal argument[s] that the plaintiffs have not stated cognizable constitutional violations, accepting the facts alleged in the complaint as true. . . . But [it] does not at this stage in the litigation have jurisdiction to decide whether any constitutional violations actually occurred or to resolve any factual disputes necessary to make that determination." *Maldonado v. Fontanes*, 568 F.3d 263, 268 (1st Cir. 2009). Dismissal under Rule 12(b)(6) may be appropriate where, as here, "[t]he facts are not in

dispute; the legal conclusions from the facts are." *San Gerónimo Caribe Project, Inc. v. Acevedo-Vilá*, 687 F.3d 465, 471(1st Cir. 2012) (en banc). "Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive issue of law," even if the plaintiff's legal theory is "a close but ultimately unavailing one." *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989).

"To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "[T]he tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id*.

ARGUMENT AND AUTHORITIES

I. THE MERK ACT LIVE-STREAMING REQUIREMENT DOES NOT COMPEL SPEECH IN VIOLATION OF THE FIRST AMENDMENT.

Violations of humane slaughter practices, as brought to light by myriad undercover slaughterhouse investigations, are disturbingly commonplace in meat production. *See* James S. Cooper, *Slaughterhouse Rules: How Ag-Gag Laws Erode the Constitution*, 32 TEMP. J. SCI. TECH. & ENVTL. L. 233, 245 (2013). After studying the problem, Congress concluded "that the abuse of livestock animals on farms and in slaughterhouses violates the public interest in the humane treatment and slaughter of animals." Meat Eaters' Right to Know Act § 1(a). Congress further concluded that "[i]t is in the essential public interest that consumers of animal products possess the greatest possible information about the treatment of animals in slaughterhouses," and that the live-streaming of slaughter facilities is the means to accomplish these interests, finally uncovering "abuse that would otherwise stay hidden." MERK § 1 (b)(c); Cooper at 243.

The MERK Act live-streaming requirement does not compel speech because it calls only for mere conduct, specifically that which aids the government in the provision of information to the general public. Laws which require the provision of information, and the conduct to provide such information, are "a familiar part of our law." *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 571 n.15 (1996). "The Government has long required commercial disclosures . . . ." which "are common and familiar to American consumers, such as nutrition labels and health warnings." *American Meat Institute v.* UDSA, 760 F.3d 18, 31 (D.C. Cir. 2014). Here, the state ensures that the USDA has the means to enforce the HMSA. The First Amendment provides no basis for the preclusion of the MERK Act.

A. The First Amendment Is Not Controlling Because The MERK Act Regulates Only Conduct—The Act Does Not Compel Speech.

This Court need not subject the MERK Act to First Amendment analysis because the district court misclassified the live-streaming requirement as compelling speech, which it does not. U.S. CONST. amend. I The live-streaming requirement does not force slaughterhouses to speak at all. Rather, it requires slaughterhouses to post a live-stream on their websites or provide the live-stream to the USDA for publication. If this dissemination of information is speech, it is government speech, or speech "in the name of the government itself." *R.J. Reynolds Tobacco Co. v. Shewry*, 423 F.3d 906, 917 (9th Cir. 2004). First Amendment analysis is unnecessary when the government speaks for itself. *See Johanns v. Livestock Mktg. Ass'n*, 544 U.S. 550, 553 (2005).

1. The live-streaming requirement merely compels conduct.

The live-streaming requirement does not compel speech as it compels only conduct. This court has affirmed the rule that conduct is not subject to First Amendment analysis when it "does not partake of the attributes of expression; it is conduct, pure and simple." *D'Amario v.*

Providence Civic Ctr. Auth., 639 F. Supp. 1538, 1541 (D.R.I. 1986), *aff'd without opinion*, 815 F.2d 692 (1st Cir. 1987). In *D'Amario* a photographer was denied the ability to photograph a live concert within a public venue. *Id.* He claimed that his First Amendment rights were infringed upon, but the court found he sought to engage in an activity, not to express anything. *Id.* The act of photographing was not considered to be speech, but rather conduct. *Id.*

Here, slaughterhouses are compelled to partake in what is essentially the conduct that the photographer in *D'Amario* was denied. Like the photographer "wishe[d] to 'do' something,' the ASA claims slaughterhouses wish *not* to 'do' something. The slaughterhouses wish not to be required to install video cameras in their premises and wish not to live-stream. This is "conduct, pure and simple." *Id.* There is nothing they can request to be protected from expressing. There is simply conduct which they wish to be sheltered from doing. The live-streaming requirement is not so different from requiring slaughterhouses to install windows on their facilities. The virtual 'glass walls' created by the live-streaming requirement certainly require conduct but compel no expression on behalf of slaughterhouses. The live-streaming requirement simply makes more visible that which is already occurring and regulated by USDA inspectors, who are the eyes and ears of the American people in the food system.

2. The live-streaming requirement compels only government speech if it compels speech at all.

If the court finds here, as it did in *Glik v. Cunniffe*, that videography is a form of speech, then it must find that the government to be the speaker. 655 F.3d 78, 82 (1st Cir. 2011). In *Glik* this court recognized that the First Amendment protects the right to videotape police officers performing their duties in public. *Id.* If this can be extrapolated to provide a basis for First Amendment analysis, then the court must recognize that the speaking party is the government.

The MERK Act's live-streaming requirement establishes a statutory scheme where information, at its essence, is gathered and disseminated entirely by the government. The live-streamed video is information which a USDA inspector would have documented and reported—not information which the slaughterhouse would have documented and reported. At any point the government could do away with the alleged speech. The critical factor is which party controls the information. *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 541 (2001). Courts routinely reject compelled speech claims, demonstrating that the government may rightfully speak through a third party. *See, e.g.*, *UAW-Labor Emp't & Training Corp. v. Chao*, 325 F.3d 360, 365 (D.C. Cir. 2003). Here the dissemination is within the control of the government, rendering it government speech and therefore, does not step outside of its authority. *See Johanns*, 544 U.S. at 561; *see also*, *Pleasant Grove City v. Summum*, 555 U.S. 460, 473 (2009).

It is unlikely that the government's message would be attributed to ASA, given that companies may state that the video is required by the USDA or would be available on the USDA's website. There exists "little chance that observers will fail to appreciate that the government is the speaker." *Summum*, 555 U.S. at 471.

B. Even if the Live-Streaming Requirement is Found to Regulate Commercial Speech, the Requirement Is Permissible Under the First Amendment.

Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio offers the correct standard to apply to the case at hand for First Amendment analysis because the live-streaming requirement is a disclosure of factual information. 471 U.S. 626, 651 (1985). The Act survives *Zauderer* scrutiny as the live-streaming requirement is reasonably related to the government's substantial interests. Further, even if analyzed under the intermediate scrutiny of *Central Hudson Gas & Electric Corp. v. Public Serv. Comm'n of New York*, the Act remains constitutional. 447 U.S. 557, 557 (1980).

Compelled speech is usually analyzed under strict scrutiny. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994). However, as this case concerns commercial speech, it is treated with less rigorous scrutiny. *Bd. of Trs. v. Fox*, 492 U.S. 469, 481 (1989). Commercial speech which is *regulated* is analyzed with the same intermediate scrutiny in *Central Hudson*. 447 U.S. at 557. Nonetheless, *Zauderer*, is controlling where the Supreme Court held that, regulations which *compel disclosure* of "purely factual and uncontroversial information," the regulation only must be reasonably related to the government's substantial interest. *Zauderer,* 471 U.S. at 651. The Court made an important distinction as to limitations on First Amendment protections afforded to commercial speech, namely that "[b]ecause the extension of First Amendment protection to commercial speech is justified principally by the value to consumers of information such speech provides, [a party's] constitutionally protected interest in *not* providing any particular factual information in his advertising is minimal." *Id.*

1. To the extent that the MERK Act regulates commercial speech, the appropriate level of scrutiny is the reasonable relationship standard as articulated in *Zauderer*.

If the live-streaming requirement compels commercial speech, *Zauderer* controls. In *Zauderer*, the Supreme Court examined a rule which required the disclosure of certain information related to fees by attorneys in advertisements. 471 U.S. at 633. The Court acknowledged that laws requiring disclosure compelled attorneys "to provide somewhat more information than they might otherwise be inclined to present." *Id.* at 650. In explaining why a lower scrutiny than the intermediate scrutiny in *Central Hudson* applied, the court made the distinction that laws requiring disclosure "trench much more narrowly . . . than do flat prohibitions on speech." *Id.*

Originally, *Zauderer* was interpreted to apply only to instances where compelled commercial speech would cure consumer deception. 471 U.S. at 651. However, consumer deception is not at issue here and this need not preclude the application of *Zauderer*. ASA incorrectly argues that *Zauderer* is limited in application only to cases which involve a government interest of "preventing deception of consumers." *Id.* Last year the D.C. Circuit decided "that *Zauderer* in fact does reach beyond problems of deception." *Am. Meat Inst. v. USDA*, 760 F.3d 18, 20 (D.C. Cir. 2014) (en banc). The court concluded by "answer[ing] affirmatively the general question of whether 'government interests in addition to correcting deception,' can be invoked to sustain a disclosure mandate under *Zauderer*. *Id.* at 27 (citing *Am. Meat Inst. v. USDA,* 746 F.3d 1065, 1073 n. 1 (D.C. Cir. 2014)).

2. The MERK Act is constitutional under the *Zauderer* reasonable relationship standard.

The live-streaming requirement is constitutional under *Zauderer* standard for two reasons. First, the government has substantial interests which motivate the live-streaming requirement, both in preventing animal cruelty and in informing consumers about how meat is produced. Second, the live-streaming requirement is reasonably related to these substantial interests.

a. The state has substantial interests, which motivate the live-streaming requirement.

The district court held that protecting animals from cruelty and promoting consumer information are both substantial government interests. The district court chose not to address whether lesser government interests could have satisfied the live-streaming requirement, noting that "*Zauderer* gives little indication of what types of interest might suffice. In particular, the Supreme Court has not made clear whether *Zauderer* would permit government reliance on

interests that do not qualify as substantial . . . ." *Id.* at 23. As such, this brief asserts only that the government's interests are substantial, as this level of scrutiny would automatically satisfy any requirement of lesser interests.

i. The state has a substantial interest in the prevention of animal cruelty.

The government has a long history of affording a certain level of welfare to animals and this interest in preventing cruelty to animals is present in the live-streaming requirement of the MERK Act. Congress found that recent undercover video investigations reveal "egregious mistreatment of animals raised to produce [meat]." MERK Act § 1 (a).

The district court explained this tradition of preventing cruelty to animals has its roots in the Colonial period of American history and continues today. *United States v. Stevens,* 559 U.S. at 469 (2010) ("[The prohibition of animal cruelty itself has a long history in American law, starting with the early settlement of the Colonies."). In his dissent, Justice Alito said, "[t]he [g]overnment . . . has a compelling interest in preventing the torture" of animals." *Id.* at 496.

Indeed, protecting animals from wanton cruelty or inhumane slaughter is not only an interest of the government but is public policy. *See Farm Sanctuary, Inc. v. Dep't* of Food & Agric., 74 Cal. Rptr. 2d 75, 79 (Cal. Ct. App. 1998) ("It has long been the public policy of this country to avoid unnecessary cruelty to animals," as "[t]here is a social norm that strongly proscribes the infliction of 'unnecessary' pain on animals, and imposes an obligation on all humans to treat nonhumans 'humanely.' " (citations omitted)).

Not only is there a substantial interest in preventing animal cruelty, the lower court has explained that this policy has been codified into law for well more than half a century, as evidenced by the HMSA Act of 1958. The HMSA states that "the use of humane methods in the slaughter of livestock prevents needless suffering," and makes it the "policy of the United States

that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods." 7 U.S.C. § 1901. Specifically, HMSA requires that "animals must be rendered unconscious and insensible to pain before they are slaughtered." Rep. Kahn. at 1. The live-streaming requirement does not force this court to find a new substantial interest where one previously did not exist. To the contrary, it only seeks to assist USDA inspectors in carrying out what has been a substantial interest since at least 1958. *Id.*

The substantial government interest in animal welfare is broad and extends even beyond humane slaughter methods. In *Hodgins v. USDA* the court recognized that the government had a substantial interest "to prevent the abuse of research animals . . . ." which was served by the Animal Welfare Act, 7 U.S.C. § 2131 (1994), and that "[o]ther courts have found this to be a substantial interest . . . ." 238 F.3d 421 (6th Cir. 2000).

ASA incorrectly cites *United States v. Stevens* to support its argument that the prevention of cruelty is not a substantial interest. 533 F.3d 218, 226 (3d Cir. 2008), *aff'd on other grounds*, 559 U.S. 460 (2010). *Stevens* involved a conviction brought against a man peddling dogfighting videos. *Id.* at 221-22. He was prosecuted under a federal statute which banned the creation, production or possession of depictions of animal cruelty. *Id.* The Third Circuit concluded that the laws which limit an individual's free speech with the purpose of protecting animals from cruelty are not based on a *compelling* government interest. *Id.* at 227-28. The flaw in ASA's reliance on *Stevens* is that in the present case, the government must only prove that protecting animals from cruelty is a *substantial* interest. *Zauderer*, 471 U.S. at 651. This lower level of scrutiny is required by both *Zauderer* and *Central Hudson*, the standard upon which the ASA requests this court to rule. The district court correctly decided that the government has a substantial interest in protecting animals from cruelty and this court should affirm that one exists.

ii. The state has a substantial interest in enabling consumers to see how their food is produced.

Congress has found "that information about the treatment of [animals raised for food] is of vital importance to the American consumer. Consumers are curious about where their food comes from and favor laws and policies that create transparency in the food industry. It is in the essential public interest that consumers of animal products possess the greatest possible information about the treatment of animals in slaughterhouses." MERK Act § 1 (b)(c). Congress's passage of the Act was motivated in part by "an avalanche of concern and interest in the way animals are treated on farms and in slaughterhouses" from constituents who are "desperate for more information about meat production." Rep. Kahn at 1.

The court in *AMI* explains that "evidentiary parsing is hardly necessary when the government uses a disclosure mandate to achieve a goal of informing consumers about a particular product trait, assuming of course that the reason for informing consumers qualifies as an adequate interest." 760 F.3d at 26 (citing *Zauderer,* 471 U.S. at 650). The district court pointed to this long tradition of requiring disclosure of information to consumers regarding particular traits of animal products. R. at 8. The court argued this is evidenced by the numerous federal statutes which require such disclosure: the Federal Meat Inspection Act (FMIA), the Poultry Products Inspection Act (PPIA), the Egg Products Inspection Act (EPIA), the Agricultural Marketing Act (AMA), the Federal Food, Drug, Cosmetic Act (FFDCA), and the Fair Packaging and Labeling Act (FPLA). R. at 8.

ASA argues incorrectly that no substantial interest exists in informing consumers. ASA cites *Int'l Dairy Foods Ass'n v. Amestoy*, which involved a statute that required producers of milk to disclose the use of bovine growth hormones in milk. 92 F.3d 67, 69 (2d Cir. 1996). There the court held that "consumer curiosity alone is not a strong enough state interest to sustain

the compulsion of even an accurate, factual statement." *Id.* at 74. However, distinctions between commercial information which is 'interesting' or 'important' is not the standard upon which constitutionality is measured. *See Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 765 (1976). The Court further articulated why the state has a substantial interest in informing consumers with commercial information:

> So long as we preserve a predominantly free enterprise economy, the allocation of our resources in large measure will be made through numerous private economic decisions. It is a matter of public interest that those decisions, in the aggregate, be intelligent and well informed. To this end, the free flow of commercial information is indispensable. And if it is indispensable to the proper allocation of resources in a free enterprise system, it is also indispensable to the formation of intelligent opinions as to how that system ought to be regulated or altered. Therefore, even if the First Amendment were thought to be primarily an instrument to enlighten public decision making in a democracy, we could not say that the free flow of information does not serve that goal.

Id. (citations omitted).

This is precisely what Representative Kahn intended when he urged Congress to "give consumers the information they need to vote with their wallets." Rep. Kahn at 2. The district court correctly decided that the state has a substantial interest in enabling consumers to learn how their food is produced and this court should affirm that one exists.

b. The live-streaming requirement is reasonably related to the state's substantial interests.

The live-streaming requirement is reasonably related to the government's dual interests. The *Zauderer* standard explains that the ASA's "rights are adequately protected as long as disclosure requirements are reasonably related to the State's interest." 471 U.S. at 651.

First, the live-streaming requirement is reasonably related to the government's interest in preventing animal cruelty because it reduces the likelihood of occurrence as it assists the USDA

in its enforcement efforts of the HMSA. Congress has found that "[i]nspectors are often absent or engaged in food safety inspection duties, and thus fail to notice or prevent the abuse of animals in slaughterhouses. [sic] This lack of adequate staff and resources has resulted in under-enforcement of the HMSA, which has allowed egregious mistreatment of livestock to occasionally go unnoticed." H.R. REP. NO. 112-666 at 3. As this nation's limited number of inspectors cannot realistically be everywhere at once, using cameras and live-streaming will manifestly increase their ability to discover cruelty to animals when it occurs and take appropriate actions to correct and prevent it. Slaughterhouses currently have "little incentive to train workers to treat animals humanely." *Id.* at 1. Through the MERK Act, slaughterhouses will have a greater incentive to train workers to treat animals humanely.

Second, the live-streaming requirement is reasonably related to the government's interest in empowering consumers with additional information about their food system because "the means-end fit is self-evidently satisfied when the government acts only through a reasonably crafted mandate to disclose 'purely factual and uncontroversial information' about attributes of the product or service being offered." *Am. Meat Inst.*, 760 F.3d at 26 (quoting *Edenfield v. Fane*, 507 U.S. 761, 767 (1993)). The requirement is both purely factual and uncontroversial. The live-streaming requirement is purely factual in that is displays only activities currently occurring inside of slaughterhouses. The live-streams present no opinion, persuasion, embellishment, or manipulation by either ASA members or the government—to the contrary, the live-streams present *purely* facts. Just as a glass walls do not distort the activities which take place inside of buildings, live-streams would not distort the purely factual reality of what takes place inside of slaughterhouses. Finally, the requirement is also uncontroversial as the live-streams will not be edited, delayed, or altered in anyway. By definition, this is how a live-stream is presented.

Therefore, if proper animal treatment occurs, or conversely animal cruelty may take place, it will be shown without controversy. The presentation of this purely factual and uncontroversial information is reasonably related to the interest of better informing consumers.

3. Even if *Zauderer* does not apply, the MERK Act survives First Amendment scrutiny.

The live-streaming requirement remains constitutional, even if not analyzed under *Zauderer*. The appropriate standard for commercial disclosures, as opposed to other forms of compelled speech, is the intermediate scrutiny standard as articulated in *Central Hudson*, and not strict scrutiny. Under the *Central Hudson* intermediate scrutiny standard the live-streaming requirement directly advances the government's substantial interests and is no more extensive than necessary.

a. If not analyzed under Zauderer*, the appropriate standard for commercial disclosures is* Central Hudson *intermediate scrutiny, not strict scrutiny.*

Although *Zauderer* is the most appropriate standard, *Central Hudson* intermediate scrutiny remains more appropriate than strict scrutiny because the speech is commercial in nature. The critical factor in deciding the commerciality of speech is whether it relates to consumers in making commercial decisions. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 419 (1993) (citing *Va. State Bd. of Pharmacy*, 425 U.S. at 765). Here, the live-streaming requirement affords consumers with information germane to their purchasing decisions regarding commercial products, thus qualifying as commercial speech.

Commercial speech has traditionally been treated by the court with less scrutiny than noncommercial speech. Therefore, restrictions on commercial speech, like the MERK Act, should be analyzed under *Central Hudson* and not under strict scrutiny. *Spirit Airlines, Inc. v. Dep't of Transp.*, 687 F.3d 403, 415 (D.C. Cir. 2012).

b. The live-streaming requirement satisfies Central Hudson *intermediate scrutiny.*

This brief has already established that the government has substantial interests in applying *Zauderer*, as also required by *Central Hudson*. What remains to be determined is whether these interests are directly advanced by the live-streaming requirement and whether the live-streaming requirement is no more extensive than necessary. The *Central Hudson* test is as follows:

> First, the restriction must directly advance the state interest involved; the regulation may not be sustained if it provides only ineffective or remote support for the government's purpose. Second, if the governmental interest could be served as well by a more limited restriction on commercial speech, the excessive restrictions cannot survive.

Central Hudson, 447 U.S. at 564.

Here, both parts of *Central Hudson* are satisfied.

i. The live-streaming requirement directly advances government interests.

The first part of *Central Hudson* requires that the live-streaming requirement "directly advance[] the governmental interest asserted." *Id.* at 566. To satisfy this part, the state must show "that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield,* 507 U.S. at 771. However, it is unnecessary that the state put forth any "empirical data . . . accompanied by a surfeit of background information." *Fla. Bar v. Went For It, Inc.*, 515 U.S. 618, 635 (1995). The state may "justify speech restrictions by reference to studies and anecdotes . . . ." allowing even mere extrapolations to suffice. *Id.* The restrictions on speech may be "based solely on history, consensus, and simple common sense." *Id.*

Simple common sense dictates that the live-streaming requirement will directly advance the governmental interests of preventing animal cruelty and informing consumers about their

food system. Each time even a single animal is subjected to cruelty or a single consumer goes uninformed as to the enforcement of certain statutes being enforced in her or his name, there are real harms that the USDA has the means and authority to correct. The MERK Act's live-streaming requirement will alleviate these harms to a material degree.

The ASA claims that the live-streaming requirement does not directly advance the government's interest in alleviating animal suffering because the act of observing animal cruelty does nothing to stop it. Simple common sense says otherwise. To regulate something, indeed, to prevent something from happening, inspectors must be able to *see* what is taking place inside of slaughterhouses. Re. Kahn at 1. The act of live-streaming would directly contribute to the alleviation of animal suffering because it would allow USDA inspectors to better enforce HMSA standards at slaughterhouses where cruelty is present or even prevalent. *Id.* This would aid the USDA in resource allocation, simple day-to-day enforcement, and in taking corrective action, thus preventing cruelty to animals. *Id.* ASA's claim runs counter to basic logic and law enforcement principles. Police officers patrol neighborhoods so they can *see* potential crime, the first and most necessary element of preventing such crime.

While empirical data is not required for *Central Hudson*, there is an overflow of stories, videos, and requests from USDA inspectors concerning the harms directly addressed by the live-streaming requirement. For example, "recent undercover videos taken on farms and in slaughterhouses by animal protection organizations have revealed the egregious mistreatment of animals . . . ." MERK Act § 1(a). The legislative record explains how these anecdotes abound. These videos have produced "thousands of calls, emails, and letters every year from constituents outraged by the horrendous cruelty they see in undercover videos, and desperate for more information about meat production." Rep. Kahn at 1. The live-streaming requirement will

directly advance animal protection through better enforcement of the HMSA and will directly advance the provision of information to consumers about the food system.

ii. The live-streaming requirement is not more extensive than necessary.

The second part requires that regulation on commercial speech must be "narrowly drawn". *Central Hudson*, 447 U.S. at 564 (citation omitted). Further, the regulation may "extend only as far as the interest it serves," and the government may not "regulate speech that poses no danger to the asserted state interest. *Id.* at 565 (citing *First Nat'l Bank of Boston v. Bellotti,* 435 U.S. a765, 794-795 (1978). Finally, the government may not restrict speech "when narrower restrictions on expression would serve its interest as well." *Id.*

ASA argues that because the live-streaming requirement applies to all slaughterhouses, regardless of whether humane slaughter violations have been documented in any facility, that the requirement is overly broad. ASA also argues that that the MERK Act is not the least restrictive means of educating consumers, calling instead for an educational video to be produced featuring only a selection of slaughterhouses. These arguments fall short as the live-streaming requirement is narrowly drawn and is not more extensive than necessary, and they also fail entirely to address the real harms identified by the government.

First, it is not overbroad to require all slaughterhouses to comply with the requirement. The USDA is already responsible for inspecting all slaughterhouses and all slaughterhouses must comply with HMSA H.R. REP. NO. 112-666 at 3. The live-streaming requirement allows the USDA to accomplish its duties at slaughterhouses already within the scope of inspection. The scope of inspection applies to all slaughterhouses, not just plants where humane slaughter

violations have been documented. *Id.* Second, the requirement is the least restrictive means of educating consumers about the food system, particularly violations of humane slaughter practices, as there is no labelling system in place. *Id.* at 1. A labeling system would provide the same information as the live-streaming requirement does to consumers; therefore the MERK Act is not more extensive than necessary. A video featuring merely a sampling of slaughterhouses would not be broad enough to satisfy the government's interest in educating consumers as it would not provide current and comprehensive information useful to consumers when making purchasing decisions. The type of video urged by ASA would be static and immediately outdated, providing little to no useful information to consumers.

II. THE MERK ACT'S REQUIREMENT OF LIVE-STREAMING DOES NOT CONSTITUTE AN UNAUTHORIZED WARRANTLESS SEARCH IN VIOLATION OF THE FOURTH AMENDMENT.

A. ASA Cannot Pursue a Facial Challenge Under a Fourth Amendment Claim.

The live-streaming requirement is a constitutional search, soundly within the protections afforded by the Fourth Amendment. It is improper for ASA to pursue a facial challenge. Not only does the government meet the Supreme Court's test for warrantless administrative searches, but ASA's Fourth Amendment argument is not yet ripe for review. The court should wait for specific challenges to the MERK Act on a case-by-case basis to determine its constitutionality. This will prevent this court and others from "entangling themselves in abstract debates that may turn out differently in different settings." *Nat'l Park Hospitality Ass'n v. Dep't of Interior*, 538 U.S. 803, 808 (2003).

1. Although the live-streaming requirement constitutes a search, it is reasonable.

Constitutional validity of a warrantless search is the sort of issue that can only be decided in the concrete, factual context of an individual case and courts should confine their review to the

reasonableness of the searches and seizures which have actually taken place. *Sibron v. New York*, 392 U.S. 40, 82 (1968). Not every search, seizure, or arrest must be made under a lawfully executed warrant. U.S. CONST. amend. IV. The ultimate measure of the constitutionality of a search is reasonableness. *The Fourth Amendment "Reasonableness" Requirement,* FINDLAW, http://criminal.findlaw.com/criminal-rights/the-fourth-amendment-reasonableness-requirement.html. The Supreme Court has ruled that warrantless police conduct may comply with the Fourth Amendment if it is reasonable under the circumstances. *Id.*

Here, the court should consider how slaughterhouses treat the areas subject to live-streaming requirement. The areas, namely those which involve the slaughtering and processing of animals and their carcasses, are not treated as exclusively private and should therefore have no heightened expectation of privacy; making the recording reasonable. These areas are already open to USDA inspection so there is no search beyond what they are already subject to. The MERK Act does not expand the government's search of slaughterhouses any more than is already permitted. Unlike in *Patel v. City of L.A*. where the court found that hotel guests' information was "commercially sensitive," here the slaughterhouses are already under inspection and cannot claim that the areas to have are highly personal or commercially sensitive information not already available through USDA inspection. 738 F.3d 1058, 1060 (9th Cir. 2013). If the live-streaming requirement were to be an unconstitutional search, then so too would USDA inspection entirely.

2. There is a circuit split as to whether an ordinance or statute can facially violate the Fourth Amendment.

The Ninth Circuit and the Sixth Circuit are split as to whether an ordinance or statute can facially violate the Fourth Amendment. To come to the correct conclusion, the court should consider the general principles of a facial challenge. These principles demonstrate that ASA

cannot mount a facial challenge as it cannot establish that no set of circumstances exists under which the Act would be valid. The challenges in the two circuits are as follows. The court in *Warshak v. United States* held that 18 U.S.C. § 2703(d) ("Stored Communications Act") was not susceptible to a facial challenge under the Fourth Amendment. 532 F.3d 521, 528 (6th Cir. 2008). As opposed to the *Patel* court recently permitted a facial challenge under the Fourth Amendment as related to disclosure of hotel guest information. 738 F.3d at 1060. The Sixth Circuit prevails on whether an ordinance or statute can facially violate the Fourth Amendment.

a. General principles to facially challenge a statute.

A facial challenge to a regulation's constitutionality is an effort to undermine it in all of its potential applications, to take the law off the books completely and to leave nothing standing. *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 339-40 (6th Cir. 2009) (en banc). A plaintiff can only succeed in a facial challenge by establishing that no set of circumstances exists under which an Act would be valid. Here, ASA is asking the court to decide based on hypotheticals and premature interpretations of the MERK Act. This position runs counter to the Supreme Court's "vigorously enforced . . . requirement that a statute's overbreadth be substantial . . . relative to the statute's plainly legitimate sweep," *United States v. Williams*, 553 U.S. 285, 292 (2008), placing "the burden of demonstrating . . . [that the law is substantially overbroad]" on the claimant, *Virginia v. Hicks*, 539 U.S. 113, 122 (2003); see also *N.Y. State Club Ass'n v. City of New York*, 487 U.S. 1, 14 (1988).

ASA's argument provides no legitimate basis for invalidating the MERK Act. Nor does it provide for a "substantial number of instances…in which the law cannot be applied." *Id*. Finally, as the reasonableness of any search must be considered in the context of an entity's legitimate expectation of privacy, the live-streaming requirement may be a minimal intrusion but

it is nothing more than a peek behind the curtain at that which is already made publicly accessible through USDA inspection.

b. The Sixth Circuit prevails on whether an ordinance or statute can facially violate the Fourth Amendment.

In direct conflict with the majority in *Patel* the court in *Warshak v. United States* held that the Stored Communications Act was not susceptible to a facial challenge under the Fourth Amendment. 532 F.3d 521, 528 (2008). In *Warshak*, the federal government obtained an ex parte court order under the Stored Communication Act to compel Warshak's internet service provider to produce his emails. *Id.* at 526. Warshak learned about these orders and filed a declaratory relief action to prospectively invalidate § 2703(d) under the Fourth Amendment. *Id*. at 523.

Here, the MERK Act is not intruding upon any of the procedural safeguards of the Fourth Amendment and unlike the hotels in *Patel*; slaughterhouses have no expectation of privacy as they are already under USDA inspection. 738 F.3d at 1060. Like the court in *Warshak* where the court found no "concrete facts" for the court to adjudicate Warshak's claim and concluded his action was not ripe, ASA's claim is not ripe for review. *Warshak,* 532 F.3d at 533-534. Any purported claim under the Fourth Amendment is hypothetical because ASA has zero concrete facts to persuade the court that any damage has been done. This court should not accept ASA's invitation to speculate on ostensible injuries not yet in existence.

c. ASA incorrectly argues that the court should follow the Ninth Circuit as to whether courts can entertain facial challenges to statutes under the Fourth Amendment.

In contrast to *Warshak*, ASA cites to *Patel,* which recently permitted a facial challenge under the Fourth Amendment. *Patel*, 738 F.3d at1060. In *Patel*, a municipal provision authorizing warrantless, on-site inspections of hotel guest records upon the demand of any police

officer was facially invalid under the Fourth Amendment because the search was deemed unreasonable and afforded no opportunity for pre-compliance judicial review. *Id*. at 1074.

Slaughterhouses are given notification of the MERK Act and three years to come into compliance with the law. R. at 2. The court in *Patel* said that the absence of pre-compliance judicial review for businesses not closely regulated renders the ordinance inconsistent with of the Fourth Amendment. *Patel*, 738 F.3d at 1074. The decision in *Patel* is inapplicable here as slaughterhouses are closely regulated and do not require pre-compliance judicial review. *Id.*

Finally, the court must not set aside the fact that a facial challenge is a high bar to overcome. *Id*. at 1070. ASA's facial challenge also fails on the merits. A facial challenge is "the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the [a]ct would be valid." *United States v. Salerno*, 481 U.S. 739 (1987). The Supreme Court has warned against facial Fourth Amendment challenges and the fact that the ordinance *might* operate unconstitutionally under *some* speculative circumstances is not enough to render the MERK Act invalid against a facial challenge. *Patel*, 738 F.3d at 1074.

B. Even If ASA Can Bring a Facial Challenge, the MERK Act Does Not Violate the Fourth Amendment.

This court has recognized that slaughterhouses are already required to follow extensive requirements under HMSA and FMIA and has no trouble concluding that ASA's members are pervasively regulated and thus have a reduced expectation of privacy. *Giragosian v. Bettencourt*, 614 F.3d 25, 29 (1st Cir. 2010). Further, under the *Burger* doctrine, the Supreme Court established a three-prong test to determine whether the warrantless search of a closely regulated industry violates the Fourth Amendment. *New York v. Burger*, 482 U.S. 691, 700 (1987).

The first prong of the test is satisfied because state has substantial interests in preventing animal cruelty and informing consumers about meat production. Second, the live-streaming requirement of the MERK Act is necessary to further the state's regulatory scheme because the current provisions in place have proven ineffective at accomplishing the government's interests. Third, the live-streaming requirement provides a constitutionality adequate substitute for a warrant because ASA has sufficient notice.

1. The regulatory scheme surrounding the industry satisfies the three-prong *Burger* standard.

When an industry is under pervasive regulation, warrantless inspection is permissible. *Id.* at 700. Slaughterhouses are engaged in a pervasively regulated industry, and therefore have a reduced expectation of privacy—a perquisite to a valid warrantless inspection scheme. *Id.* at 702. It should hardly surprise those who choose to become firearms dealers, for example, that they will be subjected in their business affairs to more frequent and more intrusive contact with the government, including warrantless inspections, than if they had entered into a business that did not have such obvious regulatory interests. *United States v. Biswell*, 406 U.S. 311, 316 (1972). The meat produced by slaughterhouses is sold nationwide and considered interstate commerce. Commerce, nonetheless interstate commerce, by its very nature often results in heightened governmental interests in regulation. *United States v. Maldonado*, 356 F.3d 130, 137 (1st Cir. 2004). *Burger* established a three-part test to determine whether the warrantless search of a closely regulated industry violates the Fourth Amendment. *Burger*, 482 U.S. at 702.

a. The state has substantial interests which motivate the live-streaming requirement.

The first requirement under the *Burger* doctrine is that "there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is

made." *Id*. Like in *Maldonado* where the court decided that the government has a significant interest in regulating the interstate trucking industry to ensure traveler safety; here, the government has a substantial interest in empowering consumers with more information about meat production and ensuring that animals in the slaughterhouses are treated humanely according to existing regulatory schemes. 356 F.3d at 134.

As this brief has already shown under the *Zauderer* standard, the government has met its burden by showing that protecting animals and informing consumers are substantial government interests. "Taken in the ensemble, these justifications comprise a set of legitimate and substantial interests." *Id*. at 135.

b. The live-streaming requirement of the MERK Act is necessary to further the state's regulatory scheme.

The live-streaming requirement is necessary to further the government's regulatory scheme of informing consumers how meat products are produced and of preventing cruelty to animals in slaughterhouses. *Id*. In *Maldonado* the court found that the inspections were necessary to further the government's regulatory scheme because the trucking industry was so mobile. Here, the USDA is expected to monitor an industry which slaughtered 9.1 billion animals in 2013, and at least 3.7 billion animals in 2014 (excluding fish, crustaceans, rabbits, horses and other animals for whom the USDA does not provide information.) *Farm Animal Statistics: Slaughter Totals*, THE HUMANE SOCIETY OF THE UNITED STATES (Sept. 15, 2014), http://www.humanesociety.org/news/resources/research/stats_slaughter_totals.html. The sheer number of animals being slaughtered and the speed at which meat products are provided to the public after slaughter necessitate a live-stream to effect the state's regulatory scheme. Indeed, it is difficult to imagine how the USDA can accomplish its tasks *without* the MERK Act's live-stream requirement.

Although ASA argues there are already USDA inspectors at ASA's member facilities, Congress has the power to expand and supplement their reach by adding the live-streaming requirement. Providing more information to consumers is necessary to allow consumers to know how meat is produced and to ensure the humane treatment of animals used in meat production. Inspectors frequently report that video surveillance would facilitate robust enforcement of HMSA through more vigilant monitoring of animal treatment. Rep. Kahn at 1.

c. In terms of the certainty and regularity of its application, the live-streaming requirement provides a constitutionality adequate substitute for a warrant.

Burger further requires that the "regulatory statute must perform two basic functions of a warrant: it must (1) advise the owner of the commercial premises that the search is being made pursuant to the law and (2) have a properly defined scope, and it must limit the discretion of the inspecting officers." *Burger*, 482 U.S. at 703. Although ASA incorrectly argues that the Act fails this prong because it lacks a "properly defined scope," this is unpersuasive, as the First Circuit requires that the regulation provide "notice to those regulated and restrictions on the administrators discretion." *United States v. Gonsalves,* 435 F.3d 64, 67 (1st. Cir. 2006).

i. ASA has sufficient notice of the regulation.

Slaughterhouses have adequate notice of the search and are given three years to comply; therefore, the owner of the premises is advised that the search is being made. R. at 2. The purpose of the MERK Act is for the slaughterhouses to know that consumers are constantly watching, and thus "vot[ing] with their wallets." Rep. Kahn at 2. In *Collannade Catering Corp. v United States*, the court dealt with statutory authorization for warrantless inspections of federally licensed dealers in alcoholic beverages. 397 U.S. 72 (1970). There, federal inspectors, without a warrant and without the owner's permission, forcibly entered a locked storeroom to

seize illegal liquor. *Id.* at 72. The Court concluded that Congress had ample power "to design such powers of inspection under the . . . laws as it deems necessary . . . " to satisfy substantial government interests. *Id*. at 76. The court in *Gonsalves* determined that it was self-evident that Gonsalves already had notice from the statute that his office was subject to a search. *Gonsalves,* 435 F.3d at 68. Similarly, the MERK Act gives sufficient notice. *Id*. Further, an unauthorized force does not accompany the search like it did in *Colannade Catering Corp*. and the Act gives ASA notice and the legal basis for the live-streaming requirement. 397 U.S. at 76.

ii. The MERK Act has a properly defined scope.

The First Circuit has described this prong as requiring that the inspection scheme provide "notice to those regulated and restrictions on the administrators' discretion." *Gonsalves,* 435 F.3d at 67. Although ASA contends that the MERK Act fails this prong because it claims the Act has no defined scope given it requires continuous and ongoing live streaming, this argument is not persuasive. R. at 14. The very purpose of the MERK Act is to have continuous and uninterrupted streaming. Further, the MERK Act also contains sufficient restraints on the discretion of USDA inspectors. The MERK Act requires *all* slaughterhouses to live stream *everything*, because of this, the Act cannot be employed in a discriminatory fashion.

Therefore, the MERK Act meets the three prongs of the *Burger* doctrine for warrantless administrative searches and ASA fails to state a claim under the Fourth Amendment.

CONCLUSION

The Appellees respectfully ask this Court to AFFIRM the judgment of the district court.

Respectfully submitted,

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TEAM 19
ATTORNEYS FOR APPELLEES

APPENDIX A

UNITED STATES CONSTITUTION

U.S. Const. amend. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

U.S. Const. amend. IV.

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

APPENDIX B

The Meat Eaters' Right to Know Act

Section 1 – Congressional statement of findings

(a) The Congress finds that the abuse of livestock animals on farms and in slaughterhouses violates the public interest in the humane treatment and slaughter of animals raised for meat and poultry. Recent undercover videos taken on farms and in slaughterhouses by animal protection organizations have revealed the egregious mistreatment of animals raised to produce these products.

(b) The Congress further finds that information about the treatment of these animals is of vital importance to the American consumer. Consumers are curious about where their food comes from and favor laws and policies that create transparency in the food industry.

(c) It is in the essential public interest that consumers of animal products possess the greatest possible information about the treatment of animals in slaughterhouses. Video surveillance providing continuous footage of activities in these facilities promotes this goal.

Section 2 – Definitions

(a) Slaughter plant—Slaughter plant refers to any facility engaged in the slaughter of animals for meat and poultry products, which is operating under a grant of inspection by the U.S. Department of Agriculture or a custom exemption to such inspection.

(b) Video recording—Video recording refers to live footage produced by high-definition video cameras stationed at fixed locations throughout a slaughter plant, and to any recording capturing live images inside the slaughter plant.

(c) Video streaming—Video streaming refers to a continuously running live feed, streamed on the Internet, of a video recording taken inside the slaughter plant.

(d) Company website—Company website refers to any Internet web page owned or operated by, or on behalf of, a slaughter plant or its parent company.

Section 3 – Video Recording Required

Slaughter plants must produce video recordings capturing every location of the slaughter plant at which live animals or carcasses are handled or slaughtered, including all truck unloading areas, pens, and chutes, as well as the stun box, shackle area, kill line, and processing areas.

Section 4 – Live Video Streaming Required

(a) Slaughter plants must provide on their company website or websites live video streaming of all video recordings produced pursuant to Section 3.

(b) Such video streaming must be freely accessible and continuously available to any visitor to the company website.

(c) Slaughter plants that do not maintain a company website must make their video recordings available to the United States Department of Agriculture, which shall make such recordings available to the public under the Freedom of Information Act, 5 U.S.C. § 552.

Section 5 – Penalties

(a) Failure of a slaughter plant to produce and provide video recording as described in Section 3 shall result in a fine of not less than $1,000 per day for each day or portion thereof that video recording is not produced.

(b) Failure of a meat company to provide video streaming as described in Section 4 shall result in a fine of not less than $1,000 per day for each day or portion thereof that video streaming is not provided on a company website or supplied to the USDA under Section 4(c).

Section 6 – Effective Date

In order to give slaughter plants sufficient time to set up the technology necessary to comply with the law, the effective date of this statute is March 2, 2015.