CV 11-55440 NCA (ABCx)

In the UNITED STATES COURT OF APPEALS
For the SECOND CIRCUIT

National Meat Producers Association,

Plaintiff-Appellee

- v. -

Commissioner, New York State Department of Agriculture and Markets and the New York State Department of Agriculture and Markets,

Defendant-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OPENING BRIEF OF DEFENDANT-APPELLANTS

Team Number 19

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ISSUES PRESENTED

1. Whether the Animal Products Consumer Information Act, which alerts consumers to certain risks related to meat consumption by asking meat retailers to display in-store signs, is preempted by a clause of the Federal Meat Inspection Act, which prohibits laws that impose labeling requirements on meat manufacturers.
2. Whether the Animal Products Consumer Information Act, which seeks to further the significant governmental interests of public health, environmental health, and reduction of animal cruelty by reducing the overall animal products market, violates the dormant Commerce Clause.

STATEMENT OF THE CASE

Plaintiff-Appellee, the National Meat Producers Association ("NMPA," "Appellee"), brought this action against the New York State Department of Agriculture and Markets and the Department Commissioner (collectively, "State" or "Appellants") seeking declaratory judgment and injunctive relief. Specifically, the NMPA claims that the Animal Products Consumer Information Act ("APCIA"), N.Y. Agric. & Mkts. Law § 1000, is unconstitutional on two grounds. First, the NMPA alleges that the APCIA is preempted by the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. §§ 601-678 (2006) and therefore violates the Supremacy Clause of the U.S. Constitution. Second, the NMPA alleges that the APCIA violates the Commerce Clause, arguing that it discriminates against out-of-state meat processors and imposes unreasonable burdens on interstate commerce.

In the court below, the NMPA filed a motion for summary judgment. On the issue of the preemption, the court found for the State and held that the APCIA was not preempted and did not violate the Supremacy Clause. On the Commerce Clause issue, the court found for the NMPA.

Accordingly, the court granted the NMPA's motion for summary judgment on the ground that the APCIA violated the Commerce Clause. The State now appeals the district court's ruling.

STATEMENT OF FACTS

In 2010, the New York legislature was faced with significant financial problems. *Nat'l Meat Producers Ass'n v. Comm'r*, No. CV 11-55440 NCA (ABC), *3 (S.D.N.Y. Sep. 15, 2012) ("Record" or "R."). To tackle these problems, the legislature created various committees to find ways for the state to reduce costs and save money. R. 3. One committee found, after hearing over 1,000 hours of expert testimony and reviewing numerous studies, that consumers buy healthier, more environmentally friendly products when they are better educated about the food they buy. R. 3. Additionally, the committee noted that educated consumers also buy products that do not involve animal cruelty. R. 3. All of this would, in turn, help the state save money. R. 3.

The committee recommended specifically that the state focus on educating citizens about the dangers of consuming animal products. R. 3. The committee noted that consumption of meats was a source of many health problems. R. 4. For example, numerous experts believe that consuming less animal products would benefit human health and prevent numerous cases of four of the top seven causes of death in the United States. R. 4. Furthermore, heart disease, cancers, type 2 diabetes, stroke, and hypertension can all be prevented and reversed with a reduction in the consumption of animal products. R. 4. Additionally, the overuse of antibiotics by large concentrated animal feeding operations ("CAFOs") has been linked to a number of highly infectious and drug resistant diseases. R. 6. These illnesses cause thousands of deaths every year, and cost the country billions in health care costs each year. R. 6.

Additionally, the committee found that the production of meat products had a negative impact on the environment. R. 8. The environmental damage of these CAFOs account for

significant costs throughout the United States. R. 8. These unhealthy and unsanitary living conditions result in a dangerous concentration of manure. R. 9. The improper storage and removal of manure causes contaminations in drinking water, and destroys marine life. R. 9. The manure also secretes ammonia into the atmosphere, causing respiratory diseases in both humans and animals. R. 10. These serious environmental impacts will cost the taxpayers of New York State at least $56 million. R. 9.

The committee also found that meat production often creates unnecessary suffering of animals. R. 11. The beef industry is particularly known for a number of cruel practices towards livestock. Addendum B to Record, *1-2 ("Add. B."). The ranchers commonly brand, castrate, dehorn, and slaughter cattle without the use of any anesthetics. Add. B. at 1-2. In many cases, inhumane practices are used, including mutilating bulls' penises without anesthetic, and dragging sick cattle off of trucks with tractors. Add. B. at 3-4. Similar cruelties are also common in the pork industry. Add. B. at 4.

Armed with this information, the committee advocated the passage of a new regulation that would "encourage the reduction of the public's consumption of animal products which would in turn reduce the long-term health care and environmental costs to the State." R. 3. The legislature responded by passing the Animal Products Consumer Information Act ("APCIA"), with the goal of "protect[ing] 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 (2010).

The APCIA educates citizens on health, environment, and animal cruelty issues by requiring retailers to display placards wherever animal products intended for human consumption are sold. § 1000.4.1. The placards are to state the following:

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

Id. This information is to be written on signs of a proscribed size and color scheme, or included on restaurant menus. § 1000.4.2-4.

The website referenced on the placard, www.informedchoice.ny.gov, provides detailed information on how consuming animal products affects health, the impact that meat production has on the environment, and how animal agriculture leads to unnecessary animal suffering. R. 4. Additionally, the website provides a list of farms in New York that are environmentally sustainable and humane. R. 4. All of the information provided is approved by experts who testified before the committee. R. 4.

After passage of the APCIA, the National Meat Producers Association ("NMPA") challenged the law, claiming that it was unconstitutional on two grounds. R. 1-2. First, the NMPA alleges that the placard requirement is preempted by a provision of the Federal Meat Inspection Act ("FMIA"), 21 U.S.C. §§ 601-678, and therefore violates the Supremacy Clause of the Constitution. R. 2. The FMIA provides that "[m]arking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State." 21 U.S.C. § 678. The NMPA alleges that the APCIA's placard requirement constitutes "labeling" that is "in addition to or different than" the FMIA's labeling requirements.

R. 2. The NMPA next alleges that the APCIA is unconstitutional because it discriminates against out-of-state meat processors and imposes a burden on interstate commerce in violation of the Commerce Clause. R. 2.

The State now appeals the ruling of the lower court, which granted the NMPA's motion for summary judgment on the ground that the APCIA violated the Commerce Clause.

SUMMARY OF THE ARGUMENT

The Animal Products Consumer Information Act was enacted to educate New York's citizens on some of the many negative effects of meat consumption and problems associated with the meat industry. The APCIA requires retailers to place small placards in their stores or menus. These placards explain how reducing meat consumption benefits health, how the meat industry farms negatively affect the environment, and how the practices used in handling the animals often result in unnecessary animal suffering.

The state of New York hoped that by implementing the APCIA, its consumers would choose to eat less meat. By so doing, public health would improve, the environment would benefit, and animal cruelty would be diminished. The benefits would also be financial. With a healthier public and cleaner environment, New York could save the money it would have spent treating heart attacks and cleaning up its rivers, and instead put that money into education, assistance to the elderly, and other important social programs.

Though the public, the environment, animals, and the State of New York all stood to benefit from the implementation of APCIA, the meat industry and its lobbying associations opposed its passage. Ultimately, the meat industry challenged the law and asked the courts to declare it unconstitutional. The meat industry argued that the APCIA was preempted by federal

law and therefore violated the Supremacy Clause. It also argued that the APCIA burdened interstate commerce and therefore violated the Commerce Clause.

Though the meat industry may not approve of the APCIA, it cannot show that the law is unconstitutional. First, the APCIA does not violate the Supremacy Clause. The meat industry claims that the APCIA is preempted by the Federal Meat Inspection Act, which prohibits states from setting "labeling . . . requirements in addition to, or different than, those made under" the act. 21 U.S.C. § 678. However, the industry fails to show how this preemption clause applies to the APCIA's placard requirement. State laws and regulations can only be preempted when Congress specifically intends to preempt them. Congress demonstrates this intent by expressly preempting state laws, by creating broad federal laws that occupy an entire field, or by making federal laws that conflict with state laws. Here, however, there is no evidence Congress intended the FMIA to preempt laws such as the APCIA. First, the APCIA is not expressly preempted, mainly because Congress never intended the FMIA to apply to anything but packaging and ingredient standards, and also because the APCIA's requirements do not constitute "labeling" as defined in the FMIA. Additionally, the FMIA is narrow in scope and in fact specifically allows states to co-occupy the field of meat commerce with the federal government. Finally, the FMIA and the APCIA do not conflict in any way. Accordingly, the APCIA is not preempted and does not violate the Supremacy Clause.

Next, the APCIA does not violate the Commerce Clause. It has long been established that the Commerce Clause contains a "negative" or dormant aspect. A law can violate this dormant Commerce Clause if it directly regulates or discriminates against entities from other states attempting to engage in interstate commerce. Furthermore, this Court has held that a law is clearly discriminatory if it facially discriminates against interstate commerce, or is facially

neutral but harbors a discriminatory purpose. In either case, a violation exists only where the law is "clearly discriminatory." The APCIA does not prevent or restrict out-of-state businesses from entering into interstate commerce. Further, the APCIA does not harbor a discriminatory purpose because the statute was enacted to educate the citizens of New York about the dangers of eating too much meat. Therefore, the APCIA does not clearly discriminate against interstate commerce, and accordingly, the Court utilizes a balancing test, under which the law is invalidated only if the law's burdens on interstate commerce "clearly exceed" the putative local benefits of the law. In this case, the APCIA only places a de minimis burden on interstate commerce but substantially benefits the State.

Because the APCIA neither violates the Commerce Clause nor the Supremacy Clause, it is not unconstitutional. Accordingly, this Court should reverse the lower court's decision granting summary judgment to the NMPA.

STANDARD OF REVIEW

The Court must review a district court's grant of summary judgment *de novo*. *Town of Southold v. Town of East Hampton*, 477 F.3d 38, 46 (2d Cir. 2007). Summary judgment is only granted when "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The Court views "the evidence in the light most favorable to the non-moving party, drawing all resounable inferences and resolving all ambiguities in its favor." *Town of Southold*, 477 F.3d at 46.

ARGUMENT

The Animal Products Consumer Information Act provides citizens of New York with information about how animal agriculture and animal product consumption negative impacts health, the environmental, and leads to animal mistreatment. N.Y. Agric. & Mkts. Law § 1000.3.

As the law is intended to discourage animal consumption, the National Meat Producers Association opposes its implementation and argues that it violates the Supremacy and Commerce Clauses of the U.S. Constitution.

The APCIA does not violate any provisions of the Constitution. First, the APCIA does not violate the Supremacy Clause. The NMPA claims that the APCIA is preempted by the Federal Meat Inspection Act, however, state regulations can only be preempted when Congress specifically intends to preempt them, and Congress never intended the FMIA to preempt laws like the APCIA. This is demonstrated by the fact that the language of the FMIA does not expressly preempting state laws, the FMIA's scope is not sufficiently broad to occupy the entire field of meat production, and the FMIA fails to conflict with the APCIA. Accordingly, the APCIA is not preempted and does not violate the Supremacy Clause.

Next, the APCIA does not violate the Commerce Clause. The Commerce Clause contains a "negative" or dormant aspect. A law can violate this dormant Commerce Clause if it directly regulates or clearly discriminates against entities from other states. The APCIA does not prevent or restrict out-of-state businesses from entering into interstate commerce, nor was it passed with a discriminatory purpose. Therefore, the APCIA does not clearly discriminate against interstate commerce. Because there is no clear discrimination, the Court must balance the APCIA's burdens on interstate commerce against the local benefits of the law. Here, the APCIA only places a de minimis burden on interstate commerce but has substantial local benefits. As a result, there is no violation of the Commerce Clause.

As the APCIA is not preempted and does not violate the dormant Commerce Clause, the NMPA's motion for summary judgment should have been denied in the court below. Accordingly, the ruling of the district court should be reversed.

I. THE COURT BELOW CORRECTLY FOUND THAT THE APCIA DOES NOT VIOALTE THE SUPREMACY CLAUSE BECAUSE IT IS NOT PREEMPTED BY THE FMIA THROUGH EXPRESS, FIELD, OR CONFLICT PREEMPTION.

The Supremacy Clause of the United States Constitution states that "the Laws of the United States . . . shall be the supreme Law of the Land." U.S. Const. art. VI cl. 2. Accordingly, when state laws conflict or interfere with federal law, federal law preempts state law and state laws are considered invalid. *Hillsborough Cnty., Fla. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 712 (1985).

However, in our federal system States must be able to function as independent entities. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). Certain fields are traditionally reserved to the states, such as the field of public health and safety. *Id.* Accordingly, courts presume that state laws dealing with health and safety are only preempted if Congress clearly manifests its intent to preempt those laws. *Id.*

Thus, the key to determine whether a state law is preempted is Congressional intent. *Id.* (citing *Retail Clerks Int'l Ass'n, Local 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96 (1963)). The Supreme Court has held that "[i]n determining whether a state statute is preempted by federal law . . . our sole task is to ascertain the intent of Congress." *California Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272, 280 (1987). Only when Congress intends to preempt certain state laws are those laws actually preempted.

Congress demonstrates its intent to preempt state laws in only three ways. *Id.* First, Congress may expressly state that it intends for federal law to preempt state law. *Id.* Second, "congressional intent to preempt state law in a particular area may be inferred" when a federal law is detailed and pervasive, leaving no room for States to create supplemental regulations of their own in that field. *Id.* at 280-81. This type of preemption is called field preemption. *Gade v.*

Nat'l Solid Waste Mgmt. Ass'n, 505 U.S. 88, 98 (1992). Finally, it is assumed that Congress intends to preempt any state laws that directly conflict with federal laws and regulations. *Guerra*, 479 U.S. at 281. This is known as conflict preemption. *Gade*, 505 U.S. at 98.

Here, New York's Animal Products Consumer Information Act ("APCIA") is not preempted by the Federal Meat Inspection Act ("FMIA"). The FMIA governs the fields of health and safety, so it is presumed that it preempts state law only if Congress intended it to do so. However, Congress never intended the FMIA to preempt states from disseminating information about the effects of eating animal products on consumers' health, from informing consumers on the effects of animal production on the environment, or from educating citizens about animal handling practices. The FMIA does not expressly preempt such state action, it is not pervasive enough to impliedly preempt such state action by means of field preemption, and it does not conflict with that type of action. Accordingly, under any of the three tests for preemption, the FMIA fails to preempt the APCIA.

a. **The APCIA is not expressly preempted for two reasons: first, Congress did not intend the FMIA's preemption clause to extend beyond the areas regulated by the FMIA, and second, the APCIA's placards do not constitute "labeling" as defined by the FMIA.**

Express preemption occurs when Congress uses explicit preemptive language within a statute. The interpretation of that language, however, "depends upon reading the whole statutory text, considering the *purpose and context* of the statute." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006) (emphasis added). The purpose of the Federal Meat Inspection Act ("FMIA") was to ensure that consumers were not exposed to mislabeled and unwholesome meat products. Accordingly, the preemption clause found in the FMIA should not be read to extend so far as to prohibit states from informing consumers on the health, environmental, and animal treatment concerns that arise from eating meat. Next, even if the FMIA's preemption clause were to extend

to regulations dealing with health, the environment, and animal treatment, the requirements of the Animal Products Consumer Information Act's ("APCIA") would not be preempted because they do not require "labels" or "labeling," and they do not "accompany" the meat.

1. The FMIA does not expressly preempt the APCIA's placard requirement because the purposes of the laws are distinct, and Congress did not intend the FMIA's preemption clause to extend beyond the areas regulated by the FMIA.

In general, the interpretation of a statute's language depends upon "the purpose and context of the statute." *Dolan v. U.S. Postal Serv.*, 546 U.S. 481, 486 (2006). In preemption cases, the purpose and context help define the extent to which a preemption clause applies. *See Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992) ("Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.").

The main purpose of the FMIA is to ensure that the meat sold to consumers is not fraudulently or deceptively labeled. This purpose is evident from the act's history. In 1906, Upton Sinclair's *The Jungle* was published, which exposed some of the unsanitary conditions of the meatpacking industry. *Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965, 967 (2012). To illustrate, the book gave accounts of human workers falling into cooking vats, being boiled and ground into lard, and then being sold to the public as "Durham's Pure Leaf Lard." Upton Sinclair, The Jungle 108 (Electronic Classic Series ed. 2008). Disgusted by the thought of what they might be eating, citizens demanded action and the government responded by enacting the FMIA "to prevent the shipment of impure, unwholesome, and unfit meat and meat-food products." *Harris*, 132 S. Ct. at 967. (quoting *Pittsburgh Melting Co. v. Totten,* 248 U.S. 1, 4–5 (1918)).

The statute itself further emphasizes that the purpose of the act is to protect consumers from improperly labeled meat products. The FMIA specifically states, "It is essential in the

public interest that the health and welfare of consumers be protected by assuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled, and packaged." 21 U.S.C. § 602. Thus, the purpose of the FMIA is limited to protecting consumers against mislabeled products, and therefore the reach of the FMIA's preemption clause is limited to laws that share a similar purpose. *See Cipollone*, 505 U.S. 517.

The purpose of New York's APCIA, in contrast, is to provide and encourage "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. Thus, the New York law is entirely unconcerned with whether or not food had been adulterated or is unwholesome. It is also unconcerned with whether or not the food is properly labeled. It merely seeks to educate citizens on issues of consumer health, the environment, and animal cruelty.

Because the APCIA and the FMIA do not share a similar purpose, the APCIA falls outside the scope of the FMIA's preemption clause. Accordingly, the lower court correctly found that APCIA is not expressly preempted by the FMIA.

2. The FMIA further does not expressly preempt the APCIA's placard requirement because the APCIA does not require "labels" or "labeling" that "accompanies" meat, as defined in the FMIA.

As a general rule, the FMIA allows states to make requirements and take actions that are consistent with the act. 21 U.S.C. § 678. The FMIA does however contain a small preemption clause that prohibits states from setting "[m]arking, labeling, packing, or ingredient requirements in addition to, or different that, those made under" the act. *Id.* The FMIA narrowly defines the word "label" as "a display or written, printed, or graphic matter upon the immediate container . . . of any article." 21 U.S.C. § 601(o). "Labeling" is defined slightly more broadly as "all labels

and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article." 21 U.S.C. § 601(p). However, the FMIA does not define what it means to "accompany" a meat container or wrapper, and as such, courts are split as to whether in-store signs and notices such as the placards required by the APCIA are considered "labeling" that "accompany" the meat containers.

Some courts have found that determining whether an in-store sign or notice constitutes labeling accompanying a product depends on whether the sign or notice is part "of an integrated distribution program." *See, e.g.*, *Meaunrit v. ConAgra Foods Inc.*, 2010 WL 2867393 (N.D. Cal. July 20, 2010). This language comes from *Kordel v. United States*, 335 U.S. 345 (1948). In *Kordel*, a drug producer was charged with improperly labeling his products in violation of the Federal Food, Drug, and Cosmetics Act ("FDCA")[1]. *Id.* at 346. The alleged mislabeling did not appear on the product packaging itself, but was written in pamphlets and advertisements that were displayed in stores or delivered to clients directly by mail. *Id.* at 346-47. In essence, the producer was attempting to circumvent the statute. *Id.* at 349.

The *Kordel* court held that the information was part "of an integrated distribution program" and constituted labeling that accompanied drugs because it was information designed by the seller and distribute to buyers. *Id.* at 349-50. In that sense, it effectively served the purpose of information written directly on a label. *Id.* at 349-50. The *Kordel* court also emphasized that its ruling was necessary to preserve "the high purpose of the Act." *Id.* at 349. The court reasoned that if the FDCA only regulated information attached to the product, then it would "create an obviously wide loophole" for distributers. *Id.*

[1] At the time, the FDCA's definition of "labeling" was essentially the same as the current definition used by the FMIA. *See Kordel*, 335 U.S. at 347-48.

Other courts, including this Court, have found that whether an in-store sign or notice constitutes labeling accompanying a product depends on "the relationship" between the product and the sign or notice. *See, e.g.*, *Chem. Specialties Mfrs. Ass'n, Inc. v. Allenby*, 958 F.2d 941, 947 (9th Cir. 1992). This Court has clarified that "'labeling' comprises those materials designed to accompany the product through the stream of commerce to the end user, but not those designed to notify . . . the general public." *New York State Pesticide Coal., Inc. v. Jorling*, 874 F.2d 115, 120 (2d Cir. 1989). For example, in *Jorling*, a New York law required those who sold and applied pesticides to warn landowners of the dangers of using specific chemicals. *Id.* at 116. The sellers argued that such a requirement constituted labeling, which was preempted by the Federal Insecticide, Fungicide & Rodenticide Act ("FIFRA")[2]. This Court found that such warnings did not constitute "labeling" under FIFRA because the warnings were intended to inform the general public, not accompany the product to the end user. *Id.* at 120. This Court added, "Congress intended to moderate the behavior of people who sell and apply pesticides [when it enacted FIFRA]. Because the New York provisions are designed to warn the public at large, they do not constitute preempted "labeling" under FIFRA." *Id.*

This Court also noted in *Jorling* that a preemption clause is less applicable when a state law "preserv[es] the force of the" federal statute and "serve[s] to further the purpose of the statute." *Id.* at 119. In *Jorling,* this Court found that the New York requirements did "not impair the integrity of the FIFRA label. Rather, they serve[d] to further the purpose of the statute." *Id.* Accordingly, this Court felt that there was less reason to apply the preemption clause. *See Id.*

Using these cases as guidelines, many courts have found that in-store signs and notices do not constitute "labeling" under the FMIA and are therefore not preempted. For example, in

[2] At the time, the FIFRA's definition of "labeling" was also essentially the same to the current definition used by the FMIA. *See Jorling*, 874 F.2d at 118-19.

American Meat Inst. v. Ball, 424 F. Supp. 758, 763 (W.D. Mich. 1976), the court found that red-on-yellow notices explaining meat quality in stores and on menus did not constitute "labeling" as defined by FMIA. Likewise, in *Gershengorin v. Vienna Beef, Ltd.*, 2007 WL 2840476, *3 (N.D. Ill. 2007), the court found that in-store advertisements of products could not be considered "labeling" under the FMIA.

In the present case, the APCIA's placard requirements are not expressly preempted by the FMIA's preemption clause because the APCIA requirements do not constitute "labels" or "labeling" that "accompanies" meat. First, the APCIA requirements cannot be considered labels because labels must be placed "upon the immediate container . . . of any article." 21 U.S.C. § 601(o). As the APCIA does not call for such placement, the APCIA's placards are not considered labels as defined by the FMIA.

Next, the placards are not considered "labeling" either because they do not accompany the product. Under the definition used in *Kordel*, this is not labeling because it isn't part of any type of integrated distribution program. They are not designed by the sellers in an attempt to mislead buyers. Rather, the placards are state requirements imposed on sellers and have little to do with how the meat is distributed or marketed by the manufacturer. Additionally, unlike in *Kordel*, there is no danger here that allowing the placard requirement will defeat the "high purpose" of the FMIA. The two acts have different objectives and different purposes, as discussed above. Accordingly, using the rational from *Kordel,* the placards would not be considered "labeling" as defined by FMIA.

Likewise, under the definition used by this court previously in *Jorling* the placards would not be considered labeling because they are designed to notify the general public of certain health, environmental, and animal handling issues. Additionally, they do not accompany a

product through the stream of commerce. Just as in *Jorling*, Congress intended the FMIA to regulate behavior of manufacturers. The FMIA ensures that meat producers create meat products that are what they claim to be. In contrast, the APCIA, just like the provision in question in *Jorling*, is designed to inform the public at large. Following the precedent of *Jorling*, the APCIA's requirements cannot be considered "labeling" as defined in the FMIA. Additionally, just as in *Jorling*, this New York requirement does not impair the integrity of the FMIA. Nothing in the APCIA stops the FMIA from "assuring that meat and meat food producets . . . are wholesome, not adulterated, and properly marked." 21 U.S.C. § 602. Accordingly, using the rational from *Jorling,* the placards again would not be considered "labeling" as defined by the FMIA. Therefore, just as courts have found in cases like *Ball* and *Gershengorin*, this Court should find that the in-store signs and restaurant menu notices do not constitute labeling.

The placards do not constitute labels, nor do they constitute labeling that accompanies a meat product. Accordingly, the placard requirement is not preempted by the FMIA.

b. **The APCIA is not preempted through field preemption because the FMIA is neither broad nor pervasive enough to clearly show that Congress intended to occupy the entire field of meat commerce**.

Field preemption occurs when a federal law is so broad and pervasive in scope that it becomes clear that "Congress intended federal law to occupy a field exclusively." *Freightliner Corp. v. Myrick*, 514 U.S. 280, 287 (1995). As with express preemption, field preemption occurs only when "congressional intent to supersede state law [is] clear and manifest." *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 (1990) (citing *Jones v. Rath Packing Co.,* 430 U.S. 519, 525 (1977)) (internal quotations omitted). Furthermore, when Congress enacts a provision that defines the preemptive scope of a statute, the Court must assume that "matters beyond that reach are not pre-empted." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517 (1992).

Congress never intended the FMIA to govern the entire field of meat commerce. *See Nat'l Meat Ass'n v. Harris*, 132 S. Ct. 965, 967 (2012). Rather, Congress intended the FMIA to apply only to meat packaging and inspection. *Id.*; *see also* 21 U.S.C. § 602. Congress has a fairly strong interest in regulating the packaging field of meat commerce. Consumers must be protected from mislabeled, improperly packaged, and unwholesome food, and meat producers should not be forced to comply with different packaging and ingredient requirements in each state.

In regards to other field of the meat industry, however, Congress's interest is minimal. If a grocer places a sign in his store, for example, it does not effect how the food was packaged, nor does it require manufacturers to comply with different packaging requirements. For this reason, Congress has long allowed retailers to post signs and placards throughout their stores. Price tags, "sale" signs, advertisements, and many other types of information for consumers are commonly found in every store. Accordingly, there is no need broaden the scope of the FMIA beyond those things that Congress has an interest in. As in store advertisements and signs are outside the interest of the federal government, the Court should find statutes requiring them to not be preempted by the FMIA. *See Cipollone*, 505 U.S at 517.

Furthermore, the FMIA itself contains a provision that defines its narrow preemptive scope. The act specifically *allows* states to pass any laws and regulations that are consistent with the act. 21 U.S.C. § 678. Such open and express permission fails to clearly demonstrate that "Congress intended federal law to occupy a field exclusively." *See Myrick*, 514 U.S. at 287. Rather, the statute actually demonstrates the opposite—that Congress intended to co-occupy the field of meat commerce together with the states.

The FMIA is neither broad nor pervasive. It applies only to meat inspection and packaging, elements with which the APCIA is totally unconcerned. Furthermore, the FMIA

specifically allows states to pass certain regulations. Accordingly, the FMIA does not demonstrate that Congress intended federal law to govern the field of meat commerce exclusively, and this Court should find that the APCIA is not preempted.

c. **The APCIA is not preempted by the FMIA through conflict preemption because it is possible to comply with both laws, and complying with the APCIA does not stand as an obstacle to the accomplishment of the purposes of the FMIA.**

Conflict preemption occurs when a state law "actually conflicts with federal law." *Grocery Mfrs. of Am., Inc. v. Gerace*, 755 F.2d 993, 999 (2d Cir. 1985) (quoting *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Commission,* 461 U.S. 190, 204 (1983)). There is an actual conflict of law when "it is impossible to comply with both state and federal law" or when a state law "stands as an obstacle to the accomplishment of the full purposes and objectives of Congress." *Id.* (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)).

Actual conflicts typically occur when complying with a state law would prevent a person from complying with a federal law. For example, in *Gerace*, a New York law required food sellers to display signs that identified all alternative cheese products as "imitation" cheese, regardless of nutritional value. *Id.* at 996-97. In contrast, a federal law mandated that only nutritionally inferior products could be labeled as "imitation." *Id.* at 997. Thus, if superior alternative cheese products were sold, state law would require retailers to mark them as imitation cheese, but federal law would prohibit them from doing so. *Id.* at 1001. Accordingly, this Court found that the New York law was in direct conflict with federal law and was preempted. *Id.*

Here, there is no actual conflict between state and federal law. First, unlike in *Gerace*, it is not impossible to comply with both the FMIA and the APCIA. In fact, complying with both is quite easy. Informing citizens about the consequences of animal consumption in no way prevents

meat producers from following the FMIA labeling and ingredient guidelines. Furthermore, the APCIA does not even apply to meat producers, it applies only to retailers.

Second, complying with the APCIA does not stand as an obstacle to the accomplishment of Congress's purpose in enacting the FMIA. The FMIA assures that "meat and meat food products are wholesome, not adulterated, and properly marked." 21 U.S.C. § 602. Complying with the APCIA does not make food unwholesome, nor does it cause food to be mislabeled. The APCIA merely provides consumers with additional information on different subject matter than that with which the FMIA is concerned. Accordingly, the APCIA is not preempted through conflict preemption.

II. THE APCIA DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE BECAUSE IT EVENHANDEDLY REGULATES THE SALE OF MEAT WITHIN NEW YORK STATE, AND THE INCIDENTAL EFFECTS THAT IT MAY HAVE ON INTERSTATE COMMERCE ARE OUTWEIGHED BY THE LOCAL BENEFIT OF PROMOTING THE HEALTH OF NEW YORK CITIZENS, PROTECTING THE ENVIRONMENT OF NEW YORK, AS WELL AS CURBING ANIMAL ABUSE.

It has been long established that it is in violation of the dormant commerce clause when a state directly regulates or discriminates against other states attempting to engage in interstate commerce. *Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*, 476 U.S. 573, 578-79 (1986). The Commerce Clause provides that "Congress shall have Power … to regulate Commerce with foreign Nations and among the several States." U.S. Const. art. I, § 8, cl. 3. The Commerce Clause itself is generally invoked as authority for federal legislation, while the dormant or "negative" Commerce Clause limits state legislation that adversely affects interstate commerce. *Hughes v. Oklahoma*, 441 U.S. 322, 326 (1979).

A law can violate the dormant Commerce Clause in only three ways: first, it could clearly discriminate against interstate commerce in favor of intrastate commerce. *Grand River*

Enterprises Six Nations, Ltd. v. Pryor, 425 F.3d 158, 168 (2nd Cir. 2005). More specifically, the Court must determine whether the statute "regulates evenhandedly with only 'incidental' effects on interstate commerce, or discriminates" against it. *Or. Waste Sys., Inc. v. Dep't of Envtl. Quality*, 511 U.S. 93, 99 (1994). Second, after the Court finds that the statute does not discriminate against interstate commerce, it may still be invalidated under a balancing test if the burdens that it places on interstate commerce clearly exceed the statute's local benefits. *Grand River*, 425 F.3d at 168. In this balancing test, only statutes that cause "significantly incommensurate burdens on interstate commerce… raise a suspicion of local preference." *Brown & Williamson Tobacco Corp. v. Pataki*, 320 F.3d 200, 209 (2d Cir. 2003). Third, a statute can violate the dormant Commerce Clause if it dictates an extraterritorial control of commerce occurring outside of the state in question.[3] *Grand River*, 425 F.3d at 168.

Furthermore, the Court adheres to a "strong tradition of judicial deference to legislative decisions" when deciding whether a statute is discriminatory. *National Elec. Mfrs. Ass'n v. Sorrell*, 272 F.3d 104, 110 (2d Cir. 2001). Laws that are motivated by "simple economic protectionism" and meet the high standard of being discriminatory are invalid. *Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). However, the Supreme Court has never invalidated a nondiscriminatory state law on the grounds that a less burdensome alternative on interstate commerce existed. Erwin Chemerinsky, *Constitutional Law: Principles and Policies* § 5.3.5, at 420 (4th ed. 2011). Here, the APCIA does not discriminate against interstate commerce because it evenhandedly regulates between in-state and out-of-state interests. Further, the burdens that it incidentally places on interstate commerce do not clearly exceed the local benefits of the law.

[3] Here, the NMPA does not argue that the APCIA attempts to regulate out-of-state activities by forcing other states to adhere to New York law. Thus, this issue is not on appeal, and is outside the scope of this case.

a. **This Court should hold that the APCIA does not violate the Commerce Clause because it does not clearly discriminate out-of-state businesses in the favor of in-state businesses**.

The first prong of a dormant Commerce Clause analysis is to determine whether the local law "clearly discriminates" against interstate commerce in favor of intrastate commerce, or whether the regulation is evenhanded, only incidentally affecting interstate commerce. *Town of Southold v. Town of East Hampton*, 477 F.3d 38, 47 (2d Cir. 2007). For a statute to reach this high "clear discrimination" standard, it must clearly differentiate in-state interests while burdening out-of-state interests. *Or. Waste Sys.*, 511 U.S. at 99. This Court has held that a law can meet the clearly discriminatory standard in three ways: (1) by facially discriminating against interstate commerce, (2) by being facially neutral but harboring a discriminatory purpose, or (3) by discriminating in its effect. *Town of Southold*, 477 F.3d at 48.

First, statutes are generally considered to be clearly facially discriminatory when they prevent or restrict out-of-state businesses from participating in a state's market while not imposing the same restrictions on in-state businesses. *See, e.g.*, *Lewis v. BT Investment Managers*, 447 U.S. 27 (1980) (invalidating a statute that prevented out-of-state banks from owning investment advisory businesses within the state, finding it to be facially discriminatory); *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511 (1935) (finding a law that prevented out-of-state milk producers to price their milk lower than in-state milk to be discriminatory); *Granholm v. Heald*, 544 U.S. 460 (2005) (finding a state law that allowed in-state wineries to ship wine directly to customers, but prevent out-of-state wineries from doing the same to be facially discriminatory and in violation of the dormant commerce clause). Further, it is important to note that the party "challenging the validity of a statute bears the burden of showing that it is discriminatory." *Brown & Williamson*, 320 F.3d at 209. If the challenger cannot meet this

burden, the State need not show any justification for the statute. *Id.* Accordingly, the Court adheres to a "strong tradition of judicial deference to legislative decisions" when deciding whether a statute is discriminatory. *National Elec.*, 272 F.3d at 110.

Second, a facially neutral law is clearly discriminatory if it was enacted with discriminatory intent. *Town of Southold*, 47 F.3d at 48. The Court typically analyzes the legislative history of the statute, as well as the minutes and correspondences of officials when determining whether a statute was motivated by a discriminatory animus. *Id. See, e.g.*, *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 352-53 (1978) (invalidating a facially neutral statute that prohibited state grading from appearing on apple boxes in part because there was evidence that the law was intended to discriminate against Washington apples carrying superior state grades); *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 269 (1984) (invalidating a statute that exempted certain locally produced alcoholic beverages from an excise tax because legislative history showed it was intended to foster local industry).

Lastly, a facially neutral law may meet the clearly discriminatory standard if it discriminates in effect. *Town of Southold*, 477 F.3d at 48. Statutes that discriminate in effect "confer a competitive advantage upon local businesses [at the expense of] out-of-state competitors." *Id.* at 49. For instance, the Supreme Court invalidated a local ordinance that required all nonhazardous solid waste in the town to be deposited at a private transfer station. *C & A Carbone, Inc. v. Town of Clarkstown, N.Y.*, 511 U.S. 383, 392 (1994). Although the law did not distinguish between in-state and out-of-state businesses, it was held to be discriminatory because it only allowed for a private, in-state waste processor to process the waste. *Id.* Similarly, the Supreme Court also invalidated a statute that imposed an assessment on all milk sold to Massachusetts retailers because its effect on in-state producers was entirely negated by the

subsidy given exclusively to in-state dairy farmers. *W. Lynn Creamery, Inc. v. Healy*, 512 U.S. 185, 194 (1994). In effect, these cases gave exclusive advantages to in-state entities at the expense of out-of-state competitors. *Town of Southold*, 477 F.3d at 49.

In contrast, when a statute "creates no barriers" against interstate businesses, it is distinguishable from a discriminatory statute. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 126 (1978). A barrier is only created when three factors are satisfied. *Id.* First, a statute must prohibit the flow of interstate goods. *Id.* Second, it must place added costs upon them. *Id.* Third, it must distinguish between in-state and out-of-state companies in the retail market. *Id.* "The absence of any of these factors fully distinguishes" a discriminatory statute from a nondiscriminatory one. *Id.* Further, the burden that interstate companies suffer "does not, by itself, establish a claim of discrimination against interstate commerce." *Id.* Thus, even when businesses no longer enjoy the same status in a state market, as long as in-state businesses have no regulatory advantage over out-of-state businesses, no violation of the Commerce Clause exists. *Id.* The mere fact that some burden is placed on the free flow of commerce is insufficient to be a violation of the Commerce Clause because of the high level of deference that the Court must give to the legislature. *Brown & Williamson*, 320 F.3d at 216.

Here, the APCIA does not discriminate out-of-state interests—it does not facially favor in-state businesses at the expense of out-of-staters, it was not created with a discriminatory animus, and it does not discriminate against out-of-state interests in effect. First, unlike the statutes in *Lewis* and its progeny, the APCIA does not restrict out-of-state entities from performing business in the state of New York. The Court views actual restrictions and prohibitions to be facially discriminatory; the mere fact that interstate commerce is at all affected is insufficient. Thus, even though the APCIA indirectly references a list of New York farms that

are environmentally sustainable and employ humane welfare standards, such a minimal effect does not amount to the clear level of facial discrimination that the standard requires.

Additionally, the NMPA has not met its burden of showing that the APCIA is facially discriminatory because the NMPA must show that the list of farms is an actual benefit to in-state businesses and a detriment to out-of-state businesses. The NMPA has shown no evidence of any actual benefit that in-state farms derive from the APCIA. Rather, the APCIA evenhandedly informs consumers of the risks of all animal products. It is designed to reduce the overall market, not just the market for out-of-state producers.

Moreover, the APCIA was not enacted with discriminatory animus, or with a protectionist goal. The law was a collaboration of a number of multi-topic congressional committees who attempted to reduce future long-term costs in the face of significant budget constraints and financial problems. The committees recommended that the state encourage the reduction of the public's consumption of animal products, which would improve the public's health, benefit the environment, and in turn reduce the long-term health care and environmental costs of the state. In addition, the legislature intended to serve the important public interest of furthering the humane treatment of animals. This was after hearing testimony regarding the cruel treatment of animals in large concentrated animal feeding operations (CAFOs), as well as the negative impacts that CAFOs have on the environment. Moreover, the inclusion of New York only farms on the list that the statute references was incidental and not intentional; it was information that the legislature had readily available, as obtaining similar lists from every state in the country would have been cost prohibitive and unreasonable. Additionally, not providing any humane farms on the website would have impaired the ability of the statute to achieve its purpose, which is to provide information to the public. Thus, the statute was created with the

intention of furthering a number of important public interests; it was not created with any discriminatory animus or protectionist goal in mind.

Lastly, the APCIA does not have a discriminatory effect on out-of-state businesses. In contrast to the ordinance in *C & A Carbone*, the APCIA does not require retailers to buy solely from in-state producers, and thus does not discriminate in effect. Further, unlike the statute in *W. Lynn Creamery*, the State does not provide in-state producers with a subsidy or a material benefit. Moreover, the list of approved farms does not create a barrier that prohibits the flow of goods in interstate commerce. The statute decreases the meat market in the state of New York, but does so evenhandedly. It does not attempt to block importation of out-of-state meat, and it does not impose any fees or taxes on out-of-state producers for the mere reason that they are out-of-state. Furthermore, *Exxon* dictates that discrimination against out-of-state producers must take place in the "retail market;" the APCIA does not distinguish against out-of-state entities in this context. Rather, retailers of meat are free to choose their suppliers without any restriction whatsoever—the only requirement the APCIA makes is that a sign be displayed "wherever animal products intended for human consumption are offered for sale." N.Y. Agric. & Mkts. Law § 1000.4.1.

The APCIA does not "clearly" discriminate against out-of-state interests. It is not facially discriminatory, it was not created with discriminatory animus, and it does not discriminate against out-of-state producers in effect.

b. **Because the APCIA is not clearly discriminatory, and the law's local benefits outweigh its burdens on interstate commerce, this Court should overturn the ruling of the lower court and find that the APCIA does not violate the Commerce Clause**.

Once a law is found to be not "clearly" discriminatory against interstate commerce, and a legitimate local public interest is identified, the Court must "assess its validity under the *Pike* balancing test." *Town of Southold*, 477 F.3d at 49. Under this test, a nondiscriminatory regulation

is invalid only if the burden it places on interstate commerce is "clearly excessive in relation to the putative local benefits." *Pike v. Bruce Church, Inc*, 397 U.S. 137, 142 (1970). Although the *Pike* test technically contains a "least restrictive alternative" component, it generally only comes into analysis when a statute has *already* been found to be discriminatory, and does not come into play as part of the balancing test. *See, e.g.*, *Brown & Williamson*, 320 F.3d at 216-17; *Freedom Holdings, Inc. v. Spitzer*, 357 F.3d 205, 217 (2d Cir. 2004); *Grand River*, 425 F.3d at 170; *Town of Southold*, 477 F.3d at 50; *Allied Artists Pictures Corp v. Rhodes*, 496 F.Supp. 408, 440 (S.D. Ohio 1980) (all cases, after deeming a law nondiscriminatory, not addressing a "least restrictive alternative" as part of the balancing test). The statute "must impose a burden on interstate commerce that is qualitatively or quantitatively different than that imposed on intrastate commerce." *Town of Southold*, 477 F.3d at 49 (internal citations omitted). This burden rests on the challenger of the statute, who must show a "disparate" burden that "is excessive compared to the local interest." *Dorrance v. McCarthy*, 957 F.2d 761, 763 (10th Cir. 1992).

To impose a burden on interstate commerce the statute must have a disparate impact on any non-local commercial entity.[4] *Town of Southold*, 477 F.3d at 50. (internal citations omitted). More specifically, the impact on interstate commerce must be different than the impact on intrastate commerce. For instance, this Court held that a New York statute that prohibited cigarette sellers from shipping and selling cigarettes directly to New York customers had a de minimis effect on interstate commerce. *Brown & Williamson*, 320 F.3d at 217. An important element of this holding was whether a state attempts to isolate itself from a national market. *Id.*

[4] The Court recognizes two other circumstances—when the statute extraterritorially regulates commercial activity beyond the state's borders, and when the statute imposes a regulatory requirement inconsistent with those of other states. However, disparate impact is the only issue on appeal, and hence the remaining issues are outside the scope of this case.

at 216. The statute was upheld partly because it in no way "obstruct[ed] or impede[d] the flow of cigarettes into New York State," meaning there was no isolation. *Id.*

If any disparate impact is found, it must then be weighed against the local benefits that the statute furthers. *Brown & Williamson*, 320 F.3d at 218. For example, in *Brown*, although the statute was found to have a restrictive effect on interstate commerce, both in-state and out-of-state businesses suffered, and the burden was not significant or "clearly excessive" enough to outweigh the local benefits. *Id.* at 219. This Court has held that local benefits include "both lowering health care costs and protecting public health." *IMS Health Inc. v. Sorrell*, 630 F.3d 263, 276 (2d Cir. 2010). These interests are not only legitimate, but also "substantial." *Id.* For instance, this Court upheld a New York City regulation requiring restaurants to post calorie content information on their menus and menu boards because "obesity is epidemic and is a serious and increasing cause of disease." *New York State Restaurant Ass'n v. New York City Bd. of Health*, 556 F.3d 114, 134 (2d Cir. 2009). The City's goal of promoting "informed consumer decision-making so as to reduce obesity and the diseases associated with it" was a substantial government interest. *Id.* The Court held curbing the "increased rates of obesity and associated health problems" would also lead to the important state interest of reducing long term health-care costs. *Id.* at 135. Additionally, the protection of the environment "is a legitimate and significant public goal." *National Elec.*, 272 F.3d at 115. Likewise, the State's interest in protecting animals from cruelty and ensuring humane treatment of animals is also a legitimate interest. *Safarets Inc. v. Gannett Co., Inc.* 361 N.Y.S. 2d 276, 280 (1974).

In the instant case, the record shows no disparate impact that stems from the APCIA; rather, any impact on interstate commerce will also impact intrastate commerce, just as the statute in *Brown*. Similar to the statute in *Brown*, the APCIA aims to reduce the entire market of

animal products to protect the health of its citizens, its environment, and its budget. The APCIA does not "obstruct or impede" the flow of animal products to the state; rather, it merely attempts to inform customers of the potential risks involved in consuming such foods.

Further, the public and environmental health benefits, as well as the long-term budgetary benefits of the APCIA far outweigh any quantitative burden that is placed on interstate commerce. Although less burdensome alternatives may exist, that is not outcome dispositive under the *Pike* test; rather, the standard asks whether the burdens "clearly exceed" the benefits, not whether a less burdensome alternative could have been performed. Thus, a de minimis burden that the statute may incidentally place on interstate commerce does not "clearly exceed" the immediate and long-term benefits of the statute.

The APCIA's local benefits vastly further the substantial State interests that the statute was designed to fulfill. Just as this Court held in *New York State Restaurant Ass'n*, curbing health problems and reducing long term health-care costs are important State interests, as is informing citizens so that they can make good decisions. The APCIA closely furthers all of these goals. Numerous experts in the field of human health have weighed in support of the statute, and the great amount of benefit that it could have. The record shows that the statute could help prevent many cases of four of the top seven causes of death in the United States. This reduction and reversal of heart disease, cancers, type 2 diabetes, and stroke would in turn "lead to a reduction in the costs of health care … for the State of New York." Studies have shown that these diseases "can be reversed by a healthy diet."

Additionally, the overuse of antibiotics by CAFOs costs the country billions of dollars in health care costs each year; a number that can be actively reduced by the APCIA. This practice of overmedicating livestock is also directly linked to the increased number of drug resistant

diseases that cause millions of infections and thousands of hospitalizations and deaths every year. Thus, the information spreading effect that the APCIA would have directly furthers the State goal of protecting the health of its citizens.

Moreover, the statute would spread information about the environmental damage of CAFOs, which cause much environmental damage in their everyday operations. This is caused by the amount of manure that CAFOs produce, which accounts for "significant" costs throughout the United States. These CAFOs are essentially large numbers of animals crowded into confined spaces—this is a very unnatural and unhealthy situation, which results in a very unhealthy concentration of manure in too small an area. This unsanitary condition is not only dangerous to the health of the animals and the humans that eat animal products, but also to the environment. The manure problem destroys drinking water and marine life, resulting in billions of dollars worth of damage that the taxpayers must shoulder.

Furthermore, spills from "manure lagoons" have sent tens of millions of gallons of manure into streams, killing millions of fish. The cost of these spills in New York State alone is projected to cost taxpayers $56 million. Additionally, the high concentration of manure resulting from improper disposal also secretes ammonia into the atmosphere, which can cause respiratory disease in both humans and animals. This airborne ammonia can also re-deposit into the ground, and reduce biodiversity or enter into other water sources. Furthermore, CAFOs have impacted climate change, and the effects will last for decades.

Also importantly, the APCIA can help change the animal products industry's cruel treatment of animals. The beef industry is particularly known for a number of cruel practices towards cattle. Branding is a cruel and common practice, which is the act of creating a mark on an animal in the form of a third-degree burn. Further, castration is a cruel and common practice

because it is performed with no anesthesia, typically with a knife or pliers. Dehorning is also an issue because it is performed by applying an irritating chemical to calves that prevents the growth of the horn, burning the horn button with a hot iron, or digging the horn out of the skull with a spoon or tube. A veterinarian called the latter method "a bloody mess," and the latter two methods cause significant pain upon the animals.

Additionally, calf handling is a problem in general, with many ranchers historically treating the animals very roughly—this is called "cowboying" the animals. This disregard for humane animal treatment continues with the treatment of sick or "downer" cattle. At times ranchers drag these sick cattle off of transportation trucks with tractors. Furthermore, to prevent heat cows from being impregnated by bulls, ranchers typically amputate or surgically fix the penis of the bull to its stomach. All of these behaviors and practices cause significant pain and stress to the cattle. The pork industry is known for similar cruelties. The APCIA would further the substantial state interest of curbing animal cruelty by informing the public of what humane treatment of animals entails, and which farms adhere to the high principles sought from them.

Thus, the burden on interstate commerce is not clearly excessive in relation to the local benefits of the law. Rather, the local benefits of the law clearly exceed the de minimis burden that out-of-state farms may hypothetically endure. The State carries a number of significant interests that it can further with the APCIA, and this Court should find that the APCIA does not violate the Commerce Clause.

CONCLUSION

For the reasons set forth above, this Court should reverse the lower court's ruling insofar as it granted NMPA's motion for summary judgment.