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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

UNION LLC d/b/a UNION HOSPITALITY GROUP, an Arizona limited liability company; and GRANT KRUEGER, an individual,

Plaintiffs,

vs.

STATE OF ARIZONA; and PAUL E. BRIERLEY, Director of Arizona Department of Agriculture, in his official capacity,

Defendants.

Case No. CV2023-018151

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

(Oral Argument Requested)

(Assigned to the Honorable Scott Blaney)

INTRODUCTION

Defendants argue that Plaintiffs lack standing because they have not suffered the requisite harms to challenge the Cage-Free Egg Rule ("Rule"). They also argue that A.R.S. Section 41-1030(A) and (D)(3) does not apply to the Rule because the Rule was enacted before those provisions, and that the Rule satisfies those provisions' requirements as well as the constitutional non-delegation doctrine.

Defendants are wrong on all counts. Plaintiffs have demonstrated that the Rule harms them by (1) increasing the cost of eggs (as Defendants' expert and the Department of Agriculture ("AZDA") have repeatedly admitted), (2) restricting what eggs Plaintiffs can buy, and (3) requiring Plaintiffs to certify their suppliers' compliance with the Rule.

The restrictions on agency authority that the Legislature enacted in Section 41-1034(A) and (D)(3) *do* apply to the Rule, and the Rule fails those requirements. Moreover, the statutes authorizing the Rule violate the non-delegation doctrine. The Court should deny Defendants' Motion for Summary Judgment ("Motion") and grant judgment for Plaintiffs.

BACKGROUND

AZDA has various regulatory responsibilities for eggs and egg products. *See* A.R.S. §§ 3-701–739. In 2008, the Arizona Legislature directed AZDA to "adopt rules for poultry husbandry and the production of eggs sold in [Arizona]." A.R.S. § 3-710(J). Prior to 2022, AZDA never required eggs produced or sold in Arizona to be cage-free.

In January 2022 AZDA proposed, and in April 2022 it finalized, a new rule for "poultry husbandry" and egg production—the regulation at issue in this case (the "Rule"). Pls.' Statement of Facts ("PSOF") ¶¶ 16–17. The Rule required that as of October 1, 2022, all egg-laying hens in Arizona must be housed "with no less than one square foot of usable floor space per egg-laying hen" and all eggs and egg products sold in Arizona must come from hens housed in the same manner. PSOF ¶ 19. Additionally, by January 1, 2025, all egg-laying hens in Arizona would have to be "housed in a cage-free manner" with the amount of floor space provided for in guidelines from the United Egg Producers ("UEP") and all eggs and egg products sold in Arizona must come from hens housed in the same way. PSOF ¶¶ 20–21. Eggs and egg products must be certified as complying with the Rule. PSOF ¶ 22. AZDA has repeatedly stated that the Rule requires retailers, including restaurants, to "verify with [their] egg suppliers that they are licensed [as complying with the Rule] and are reporting the egg sales to the Department." PSOF ¶ 58.

AZDA recently postponed full implementation until 2027 because an ongoing "egg shortage" was "creat[ing] astronomical egg prices." PSOF ¶ 26. Since then, Governor Katie Hobbs has ordered AZDA to further delay full implementation until 2034, "in response to rising egg prices." PSOF ¶ 27. AZDA predicts that suspending the Rule will allow "[m]ore egg producer[s] [to] qualify to ship eggs and sell eggs into Arizona" and thus "[d]ecrease prices by increasing availability." PSOF ¶ 28.

It is undisputed that the Rule increases the cost of eggs. PSOF ¶¶ 30–40, 46. AZDA estimated in its Notice of Final Rulemaking that the move to cage-free egg production would increase the wholesale cost of eggs by 39 cents per dozen—an increase that would be passed on to retailers and ultimately to consumers. PSOF ¶¶ 31–32. It also recognized that the Rule will impose "hundreds of millions of dollars" of capital costs on one producer to convert to cage-free egg production. PSOF ¶ 33. Production costs will also increase, including up to a 41% increase in labor input costs. PSOF ¶ 34. AZDA projects the Rule will increase yearly egg costs for each consumer by $2.71 to $8.79 based on an increased cost of cage-free eggs (1 to 3.25 cents per egg). PSOF ¶¶ 35–36; *see also, e.g.*, PSOF ¶ 30 ("As mentioned in multiple documents and the notice of intended rulemaking, the Department recognizes the cost of eggs will increase slightly because of the rule."). AZDA also anticipates a reduction in consumer surplus of $4.81 to $11.05 per household. PSOF ¶ 37. Likewise, as Defendants' own expert witness recognized, "everyone accepts that there's additional costs associated with cage-free production," and that producers "will be able to pass on most of their increased costs, if not entirely," to consumers. PSOF ¶ 40 and Ex. 7 at 29:17–18.

Plaintiff Union LLC is a restaurant that operates three restaurants in Tucson. PSOF ¶¶ 47–48, 50. Union purchases significant quantities of eggs for its menu items. PSOF ¶¶ 51–53. For example, from November 2022 through October 2023, Union purchased 578 cases (104,040 eggs) for its restaurants. PSOF ¶ 52. When buying eggs, Union does not specifically seek out eggs produced in a cage-free manner. PSOF ¶ 55. The anticipated price increases from the Rule will injure Union through increased egg and egg product costs. PSOF ¶ 57. The Rule will also restrict Union from buying non-cage free eggs and egg products originating from large producers it would otherwise buy. PSOF ¶ 56.

Plaintiff Grant Krueger manages Union. PSOF ¶ 49. Mr. Krueger also buys eggs for his own personal consumption and does not specifically seek out cage-free eggs when he does so. PSOF ¶ 59–60. As with Union, the anticipated price increases from the Rule

will negatively affect Mr. Krueger's personal finances and will restrict what eggs he can buy, and from whom, for his personal consumption. PSOF ¶¶ 61–62.

DISCUSSION

I. Plaintiffs have standing.

The Rule harms Plaintiffs by increasing the cost of the eggs they buy and restricting what eggs they can lawfully buy. In the case of Union, this harm is particularly significant as Union buys eggs in far larger quantities, and depends far more on their availability for its economic viability, than the typical Arizonan. Thus, as a constitutional matter, Plaintiffs have standing to challenge the Rule.

Plaintiffs also have statutory standing under Section 41-1034(A), which broadly authorizes "*[a]ny person* who is *or may be affected* by a rule" to "obtain a judicial declaration of the validity of the rule" from this Court. A.R.S. § 41-1034(A) (emphasis added).

A. Plaintiffs have constitutional standing.

Plaintiffs have constitutional standing because "under all circumstances, [they] possess[] an interest in the outcome of the litigation" and will suffer an "injury in fact." *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008) (citation omitted). Plaintiffs suffer an injury in fact from the Rule in three ways: (1) they are restricted in the types of eggs that they can purchase, (2) they suffer economic harm from the increase in egg prices as a result of the rule, and (3) AZDA considers Union responsible under the Rule for certifying that its suppliers are compliant. All three of these harms are sufficient for standing as a matter of "judicial policy." *Ariz. Ass'n of Providers for Persons with Disabilities v. State*, 223 Ariz. 6, 13 ¶ 16 (App. 2009).

First, courts consistently hold that buyers and sellers alike suffer a direct injury from laws prohibiting the sale of a good or service, and therefore have standing to challenge such laws. *See, e.g.*, *Freeman v. Corzine*, 629 F.3d 146, 154 (3d Cir. 2010); *cf. Farm-to-Consumer Legal Def. Fund v. Sebelius*, 734 F. Supp. 2d 668, 675, 687 (N.D. Iowa 2010) (holding plaintiffs who regularly purchased raw milk for their own

consumption had standing to challenge FDA regulations prohibiting transporting that raw milk in interstate commerce). What's more, Union also has "derivative standing to assert the subsidiary right" of its countless customers and patrons to buy eggs and egg products from non-cage-free producers. *Teixeira v. Cnty. of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017); *see also Craig v. Boren*, 429 U.S. 190, 195 (1976) ("[V]endors and those in like positions have been uniformly permitted to resist efforts at restricting their operations by acting as advocates of the rights of third parties who seek access to their market or function.").

Second, Plaintiffs, as egg consumers, also suffer a particularized economic harm from the increased price of eggs. In challenges to economic regulations, both the regulated entity and its customers suffer cognizable injuries. *See Freeman*, 629 F.3d at 155 (explaining that "cognizable injury" includes "customers of th[e] class" "against whom [the] State ultimately discriminates." (citation omitted)). Union depends on purchasing roughly 9,000 to 10,000 eggs per month for its restaurants and so will suffer a particularized harm "more substantial than that suffered by the community at large." *Ctr. Bay Gardens, LLC v. Tempe City Council*, 214 Ariz. 353, 358–59 ¶ 20 (App. 2007); *see* PSOF ¶¶ 52–53. Krueger, as an egg purchaser, also suffers particularized harm distinct from those who do not purchase eggs. *See* PSOF ¶¶ 59–62. So while the Rule will increase egg prices generally, "this economic injury will have varying repercussions for each" egg purchaser, particularly Union and Krueger. *Ariz. Ass'n of Providers*, 223 Ariz. at 13 ¶ 18.

Third, AZDA has repeatedly taken the position that retailers, including restaurants, are responsible for certifying that their suppliers are licensed and complying with the Rule. PSOF ¶¶ 22, 58. Because AZDA purports to directly regulate Union through the Rule, Union has constitutional standing irrespective of the nature of its economic injury. *See City of Surprise v. Ariz. Corp. Comm'n*, 246 Ariz. 206, 210 (2019) ("[I]ndirect assertion of regulatory authority … is sufficient injury to provide standing").

The Defendants' cases do not alter this conclusion. *Karbal v. Ariz. Dep't of Revenue*, 215 Ariz. 114 (App. 2007), does not "foreclose" standing. Motion at 16. *Karbal* is inapposite because it involved customers challenging a business activity tax assessed against businesses, not customers, and thus was not redressable through a refund. 215 Ariz. at 116–18 ¶¶ 11, 20. Unlike this case, *Karbal* did not involve restrictions on what goods or services those plaintiffs could purchase. *Id. Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 256 Ariz. 88, 93 (App. 2023), is also inapposite because the harms there—"traffic safety" issues and "loss of aesthetic value" from billboards at an intersection frequently used by the plaintiffs—are much more abstract than harm resulting from an increase in the price of eggs on a restaurant that buys eggs in significant quantities. PSOF ¶¶ 52–53.

B. Plaintiffs have statutory standing.

Defendants argue that Plaintiffs lack statutory standing for two reasons: (1) because "to the extent Plaintiffs think the [Rule] was bad for them, the likely alternative (the Initiative) would have been worse," and (2) because "Plaintiffs' theory that the Cage-Free Egg Rule will increase their egg prices rests on unsupported conjectures." Motion at 11. Even assuming these arguments could address Plaintiffs' *constitutional* standing, Defendants do not explain how they relate to Plaintiffs' *statutory* standing. Moreover, Defendants' statutory standing argument fails for three reasons.

First, the plain language of Section 41-1034(A) makes clear that the Legislature wished to confer broader standing to challenge a regulation's validity, and to apply a different test than the traditional constitutional standing analysis: "Any person who is or may be affected by a rule may obtain a judicial declaration of the validity of the rule by filing an action for declaratory relief in the superior court in Maricopa county in accordance with title 12, chapter 10, article 2." *Id*. Because the statute confers standing even to those who only "*may* be affected by a rule," *id.* (emphasis added), Defendants' arguments about "the most likely thing that would have happened" and their faulting of

Plaintiffs' "conjectures" about how the Rule will affect egg prices, Motion at 11, are irrelevant.

Second, Defendants cite no authority to support their argument that the Rule does not injure Plaintiffs because the "probable regulatory alternative" (the Initiative) would have harmed them even more.[1] Indeed, under Defendants' theory, no person would ever have standing to challenge unlawful government action, so long as the government could plausibly argue that if not for the unlawful action, it would have done something even worse. That is not right.

Third, Defendants also err in faulting Plaintiffs' claims of harm as "conjecture." To begin with, this argument does not address the harms of restricting what products Plaintiffs can buy and requiring Plaintiff Union to certify compliance. Moreover, Defendants' own expert and AZDA have repeatedly admitted that the Rule will increase the cost of eggs. Also, Defendants own arguments *against* Plaintiffs' economic harms rely on conjecture: for example, that "some of Union's restaurant patrons may prefer cage-free items," and that Plaintiffs might somehow be unharmed by price increases that will undisputedly affect the average Arizona consumer. Motion at 13.

What's more, just this year, the Court of Appeals interpreted the language in Section 41-1034(A)'s grant of standing to a person who "may be affected by a rule" "as eliminating 'the need to show a distinct and palpable injury' and instead granting standing 'if a person 'may' be affected.'" *Republican Nat'l Comm. v. Fontes*, 566 P.3d 984, 989 ¶ 12 (Ariz. App. 2025) (citations omitted). In that case, the court found that the national, state, and local Republican Party had standing under Section 41-1034(A) to challenge the improper implementation of the Election Procedures Manual by the Arizona Secretary of State. The court found that "[s]imilar to Section 1034(A)," the Administrative Procedure Act gave the Republican Party standing to seek declaratory relief "because an actual

[1] It appears AZDA itself coined this term in its Notice of Rulemaking, as Plaintiffs have been unable to find a single instance of the terms "probable regulatory alternative" or "likely regulatory alternative" being used elsewhere in state or federal case law, statute, or regulation.

controversy exists between parties who are sufficiently interested here." *Id.* at 989–90 ¶¶ 13–14; *see id.* at 989 ¶ 13 ("[A]n existing injury is not required under the Act so long as the relief sought is 'based on an existing state of facts' and 'is not advisory.'" (citation omitted)).

The same is true here. Plaintiff is obviously affected by the Rule, but even if he wasn't, his role as a purchaser and user of vast quantities of eggs makes him sufficiently interested in the validity of the Rule. Because there is an actual controversy between Plaintiff and the Department about that Rule's validity, he has standing to seek declaratory relief.

In sum, Plaintiffs have amply shown several ways in which they are "or may be affected" by the Rule, and they have standing to challenge the Rule under Section 41-1034(A).

II. The Rule does not comply with A.R.S. § 41-1030(A) & (D)(3).

The Rule violates the statutory constraints the Legislature placed on agency regulations and is therefore invalid. The rule is not reasonably necessary for a statutory purpose, nor is it specifically authorized by statute. And contrary to the State's arguments, these statutory constraints apply prospectively to *all* regulations, including the Rule.

A. The Rule is not reasonably necessary for a statutory purpose.

A regulation must be "reasonably necessary to carry out the purpose of the statute." A.R.S. § 41-1030(A). Defendants' arguments based on uniformity, "animal welfare, consumer safety," and "promoting egg production"—concepts that appear nowhere in the statutory text, and in many instances may even conflict with one another[2]—cannot justify the Rule under Section 41-1030(D).

Indeed, the Rule cannot be *necessary* to carry out a statutory purpose when AZDA has repeatedly suspended the Rule's implementation precisely because it determined that the Rule's implementation would *threaten* the very interests AZDA seeks to advance. *See*

[2] AZDA admits that its regulations necessarily involve tradeoffs between competing values, and that "the rulemaking process" involves *balancing* values such as "public health, animal welfare, and egg supply." PSOF ¶ 15.

PSOF ¶¶ 26–27 & Ex. at 54:1–4 (describing AZDA's decision to suspend Rule in light of "astronomical egg prices," so that "[m]ore egg producer[s] would qualify to ship eggs and sell eggs into Arizona"); ¶ 27 (Governor's order to further delay parts of the Rule to "allow Arizona egg producers to focus on increasing production and lowering the cost of eggs in Arizona grocery stores"). For better or worse, the Rule represents one policy choice among many—a policy choice grounded in a variety of competing values that are not specified, let alone mandated, by statute—and therefore, the Rule is not "reasonably *necessary*" to carry out the statutory purpose.

B. The Rule is not "specifically authorized."

The Rule is not "specifically authorized by statute." A.R.S. § 41-1030(D)(3). Each of Defendants' arguments to the contrary fails. First, whether AZDA previously issued *other* regulations pursuant to the same vague charge, *see* Motion at 1–3, 5, 14, is irrelevant. Notably, the other regulations Defendants discuss (dating back to 2008) long predate the statutory constraints the Legislature enacted in 2022, and nothing in the statutory text or legislative history indicates that the Legislature approved of those other regulations when it enacted Section 41-1030(D)(3). Indeed, if anything, the Legislature's subsequent tightening of statutory constraints on agency regulatory power suggests that the Legislature *disapproved* of past regulatory practices and enacted Section 41-1030(D)(3) (and other provisions) precisely to ensure that regulations would be more closely tied to specific statutory authority. *See McCandless v. United S. Assurance Co.*, 191 Ariz. 167, 174 (App. 1997) ("[I]f the legislature amends an existing statute, we presume it intended some change in existing law.").

Indeed, during debate over H.B. 2599, Senator Mesnard, who introduced the amendment to Section 41-1030(D), stated that agencies shall not "[m]ake a rule that is not specifically authorized by statute,"[3] testified in support of the measure. He was

[3] https://www.azleg.gov/legtext/55leg/2R/adopted/S.2599MESNARD1059.pdf.

unequivocal about the rationale behind the change: administrative agencies "are not supposed to be making policy."[4]

The Legislature adopted the amendment, codifying the "specifically authorized" language. As the Court of Appeals has recognized, "[a] court will interpret a statute so it can discern and apply the legislature's intent when it enacted the statute under review." *Antonio P. v. Ariz. Dep't of Econ. Sec*., 218 Ariz. 402, 405 ¶ 11 (App. 2008). Here, the Legislature's express addition of "specifically authorized" in Section 41-1030(D)(3) leaves no room for doubt: agencies may not create rules that are not "specifically authorized by statute." This statutory restriction reaffirms a foundational principle of Arizona law: that policymaking authority rests with the Legislature, not with administrative agencies.

Section 3-710(J) (the statute that purportedly authorizes the Rule) provides no *specific* authorization for the Rule—it simply charges AZDA to "adopt rules for poultry husbandry and the production of eggs sold in this state."[5] A general charge to regulate an entire industry fails Section 41-1030(D)(3)'s heightened standard requiring that regulations have *specific* statutory authorization. Moreover, Defendants save the Rule by digging up "legislative materials in 2008 [that] described 'poultry husbandry'" and "listed UEP Guidelines … as an example" of poultry husbandry. Motion at 14. Section 41-1030(D)(3) requires agencies to ground their regulations in the specific language of a statute, not in snippets of unenacted legislative history. And even if Defendants could prove those statements were a reliable guide to the intent of the Legislature itself, wide-ranging references to "the practice of breeding and raising poultry," and broad, evolving industry standards like the UEP Guidelines,[6] are not a specific authorization for the Rule.

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[4] https://www.azleg.gov/videoplayer/?eventID=2022041070&startStreamAt=839 at 22:50.

[5] Plaintiffs focus here on responding to Defendants' arguments for summary judgment in their favor; Plaintiffs' own motion provides additional reasons why *Plaintiffs* are entitled to summary judgment.

[6] Locating AZDA's authority in unenacted references to industry standards (like the UEP Guidelines) is itself problematic, as industry standards are vague and constantly evolving. An enabling statute cannot be a moving target; "[t]hat is the whole point of having written

C. All regulations, including the Rule, are subject to the APA provisions.

The State argues that "[t]he relevant APA provisions do not apply retroactively," but this is not a matter of retroactivity at all. Motion at 10. "[A] statute is not necessarily applied retroactively just because it relates to antecedent facts. Rather, a statute is applied retroactively if it disturbs vested substantive rights by retroactively changing the law that applies to completed events." *State v. Vergara*, 568 P.3d 764, 771 ¶ 26 (App. 2025) (citation modified). Plaintiffs' statutory challenge to the Rule does not "disturb[] vested substantive rights" or "chang[e] the law that applies to completed events." First, Plaintiffs' claims do not "disturb[] vested substantive rights" because AZDA does not have "vested substantive rights" to the ongoing effectiveness or validity of its regulations.[7] Second, Plaintiffs' claims do not "chang[e] the law that applies to completed events" because they only assert that the statutory provisions apply *prospectively*: that is, from their effective date onward, they govern all Arizona regulations.

The language of Subsection (A), in particular, makes clear that its requirements now apply to *all* regulations, regardless of when they were enacted: "A rule *is invalid* unless it is … reasonably necessary to carry out the purpose of the statute … ." (emphasis added). Likewise, Subsection (D) provides that "[a]n agency shall not … [m]ake a rule that is not specifically authorized by statute." Plaintiffs' statutory claims do not seek to penalize AZDA for proposing or promulgating the Rule *before* the statutes were enacted, or to upset any vested rights of AZDA. They do, however, mean that *since* Subsections (A) and (D) were enacted, those requirements now govern all regulations and they invalidate any rules that are inconsistent with them.

Additionally, Defendants' retroactivity argument overlooks the fact that the Department has effectively amended the regulation repeatedly *since* the statutes' effective date, by changing the Rule's compliance and enforcement dates. Plaintiffs' statutory

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statutes; 'every statute's meaning is fixed at the time of enactment.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (citation omitted).

[7] Otherwise, the Legislature could *never* pass a law that alters or overrides an agency's regulations.

claims are certainly not retroactive insofar as they apply to a Rule that the Department has modified after the statutes were enacted.[8]

In sum, Plaintiffs' statutory claims have nothing to do with retroactivity because they do not apply the statutes to disturb any vested substantive rights. They simply ask for prospective relief against a regulation that the statutes now prohibit.

III. Plaintiffs should prevail on their non-delegation claim.

The Legislature is constitutionally forbidden from handing its legislative power to AZDA. Ariz. Const. art. III. Yet, that is precisely what the Legislature has done by directing AZDA to "adopt rules for poultry husbandry and the production of eggs sold in this state." A.R.S. § 3-710(J). This language does not "declare[] policies" through "fixed primary standards," which is what a statute must do to survive a non-delegation claim. *DeHart v. Cotts*, 99 Ariz. 350, 351 (1965); *see also* Plfs.' MSJ at 11–16. The Legislature has failed to provide guidance that "enable[s] every person … to know what his rights and obligations are and how the law will operate when put into execution." *Hernandez v. Frohmiller*, 68 Ariz. 242, 252 (1949).

At a minimum, the Legislature must resolve "major policy question[s]." *Roberts*, 253 Ariz. at 270 ¶ 40. Recently, the Arizona Supreme Court established that the question of "whether time spent on certain activities is compensable—is the very definition of the type of major policy question that the legislature alone may determine." *Id.* But here the phrases "poultry husbandry" and "production of eggs sold in this state" leave multiple major policy questions unresolved, including the housing requirements for egg-laying hens. This question has broad significance across Arizona as "most people in Arizona [] purchase eggs," Arizona is home to "millions of chickens," and a cage-free housing requirement will increase the price of eggs. PSOF ¶¶ 29–30. As such, the imposition of such a requirement is for the Legislature to decide. *Roberts*, 253 Ariz. at 270 ¶ 40.

[8] Additionally, assuming AZDA proceeds with a new rulemaking, the statutes will unquestionably apply to *that* version of the Rule.

Defendants do not engage with the non-delegation standards at all. Nor do they provide any other test for whether a statute has impermissibly delegated legislative power. Instead, Defendants selectively quote language from case law to suggest that the Court can infer and otherwise read into the statute the standards that the Legislature failed to provide. Motion at 16–17. But "[t]he powers given [to AZDA] must, *by the provisions of the act*, be surrounded by standards, limitations, and policies." *Hernandez*, 68 Ariz. at 255 (emphasis added). By ignoring the non-delegation test, the Defendants effectively admit that the statute provides no standards for the regulation of poultry husbandry. Motion at 16–17.

Indeed, Defendants cannot meaningfully apply the non-delegation test because they maintain that constitutionally sufficient standards are self-evident from the phrases "poultry husbandry" and "production of eggs sold in this state." Motion at 17. But Defendants cite no support for the proposition that these phrases mean to "promote animal welfare and consumer safety" and "egg production" respectively. *Id.* They refer only to the legislative history of Section 3-710(J) and the "Department's consistent application" of the statute. *Id.* Elsewhere in Defendants' brief, they assert that "animal welfare and consumer safety are components of the term 'poultry husbandry,'" but again cite to only non-statutory legislative materials for support. *Id.* at 15. The court cannot rely on these legislative history materials to supply meaning to Section 3-710(J) because the "plain statutory text and the context of related statutes" demonstrate that the Legislature has provided no standards. *Aroca v. Tang Inv. Co.*, 565 P.3d 1054, 1061 ¶ 29 (Ariz. 2025) (citation omitted).

The cases on which Defendants rely do not support their capacious approach. In each of the cases, the Legislature provided a standard by which the relevant executive branch entity could regulate, which is missing here. In *State v. Arizona Mines Supply Co.*, 107 Ariz. 199, 206 (1971), the Legislature provided a standard of "necessary and feasible" for air pollution limits. In *Ethridge v. Arizona State Bd. of Nursing*, 165 Ariz. 97, 105 (App. 1989), the term "unprofessional conduct" provided "sufficient directive" when it

was included among a total of "nine reasons" a nurse's license could be suspended or revoked. In *3613 Ltd. v. Dep't of Liquor Licenses & Control*, 194 Ariz. 178, 183 ¶ 23 (App. 1999), the statute established "reasonable risk" as the standard for when a liquor license may be suspended as a result of the holder's association with racketeers or convicted felons. Finally, in *Lake Havasu City v. Mohave Cnty.*, 138 Ariz. 552, 559 (App. 1983), the statute as a whole provided guidelines for the provision of county health services, including requirements that they must be provided full time, equal to each city and town, paid for at a certain per capita cost contribution, and any contracts must adhere to terms set forth in the statute.

Defendants also argue that the Legislature must have "flexibility" in drafting statutes given the complex matters it must address and the availability of "specialized knowledge" in administrative agencies. Motion at 17. But the Legislature's ability to rely on an agency's expertise in making rules does not excuse it from providing some meaningful policy guidance in the statute itself, even on complex subjects.[9] *Marana Plantations*, 75 Ariz. at 114. The statute contemplating agency reliance on its own expertise still makes plain that such expertise must be exercised "[w]ithin the scope of its delegated authority." A.R.S. § 41-1024. Agencies "must be corralled in some reasonable degree and must not be permitted to range at large and determine for itself the conditions under which a law should exist and pass the law it thinks appropriate." *Marana Plantations*, 75 Ariz. at 114.

Moreover, the Legislature knows how to provide definite standards for agricultural regulations. In 1931, it "enacted a complete dairy code relating to dairies and dairy products, production, manufacture, handling, sale, transportation, etc., running the full gamut, beginning before the milk is taken from the cow through to the ultimate

[9] Defendants also rely on the experience requirements for the AZDA Director and his required reports to the Legislature to support the constitutionality of the statute. Motion at 17. But the experience required to be AZDA Director is immaterial to the non-delegation analysis. Article III of the Arizona Constitution is explicit that "no one of [the] departments shall exercise the powers properly belonging to either of the others." Ariz. Const. art. III. For this reason, "a law must be complete in all its terms" when passed by the Legislature. *Hernandez*, 68 Ariz. at 251–52.

consumer." *Loftus v. Russell*, 69 Ariz. 245, 250–51 (1949). The law comprised "thirty-eight pages of the 1931 Session Laws." *Id.* at 251; *see Acts Resolutions and Memorials of the Regular Session, Tenth Legislature of the State of Arizona* 170–208 (1931)[10] (the "Dairy Code"). And it was far more specific than Section 3-710(J), including providing specific requirements for barns and corrals for dairy cows. Dairy Code at 184–85. That the Legislature did not do so with respect to poultry husbandry and egg production only highlights the broad and unconstitutional delegation of legislative authority given to AZDA.

CONCLUSION

The Court should deny Defendants' Motion. Moreover, as laid out herein and in Plaintiffs' own Motion for Summary Judgment, the parties do not dispute any material facts, Plaintiffs are entitled to judgment as a matter of law, and the Court should therefore enter judgment in Plaintiffs' favor on all counts.

RESPECTFULLY SUBMITTED this 14th day of July 2025.

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[10] https://t.ly/QnXBO.

CERTIFICATE OF SERVICE

ORIGINAL E-FILED this 14th day of July, 2025, with a copy delivered via the ECF system to:

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