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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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

(Assigned to the Honorable Scott Blaney)

It is undisputed that "the cost of eggs will increase … because of the [R]ule," PSOF ¶ 30, that Plaintiffs will be particularly injured by these increases, and that the Rule directly regulates Plaintiffs and restricts their rights. Plaintiffs have standing to challenge the Rule, and Defendants' arguments to the contrary are unavailing.

Furthermore, the Rule is not specifically authorized by statute or reasonably necessary to carry out any statutory purpose, particularly where the statute is silent as to its purpose. Moreover, A.R.S. § 3-710(J) contains no standards for regulating poultry husbandry and egg production and thus unconstitutionally delegates legislative power to AZDA.

DISCUSSION

I. Plaintiffs have standing.

A. The Rule harms Plaintiffs economically.

Undisputed evidence (including "multiple documents" created by Defendants "and the notice of intended rulemaking") establishes that "the cost of eggs will increase … because of the [R]ule," PSOF ¶ 30, and that Plaintiffs will be harmed as a result—particularly Union, which buys about 100,000 eggs a year and serves them to thousands of customers. *Id.* ¶¶ 51–53; *see also id.* ¶¶ 30–40; Motion at 4–5.

Defendants' efforts to cast doubt on these facts are unavailing. They argue that "many producers and sellers were already cage-free or becoming cage-free" for reasons besides the Rule. Defs.' Resp. at 9. But that's irrelevant and does not controvert the fact that the Rule will increase prices by forcing *other* producers to convert their production methods and increase costs, and preventing *any* producers from reverting to conventional production.[1] *See* PSOF ¶¶ 30–46.

Defendants' other arguments are similarly irrelevant. They claim that "each link in the chain" from producer to customer "is an independent decisionmaker" that might choose to absorb the increased cost instead of passing it on to customers. Defs.' Resp. at 10. But this speculation does not controvert the fact that retailers (like Union) and customers (like Krueger) will ultimately bear at least *some* of these costs. *See, e.g.*, PSOF ¶ 40.

Similarly, Defendants miss the mark when they fault Plaintiffs for "not know[ing] which producers produce the eggs they buy, nor whether such producers have changed or will change practices because of the … Rule." Defs.' Resp. at 10. But the logic articulated by both sides' experts (and AZDA itself) applies equally to *any* regulated producer:

[1] In postponing the Rule's full implementation, Defendants recognized that allowing conventional production will enable "[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. That would make no sense unless the Rule had an effect on egg prices.

requiring costlier methods of production results in costlier eggs, and those costs affect producers, retailers, and consumers alike. PSOF ¶ 30.

Finally, Defendants argue that Plaintiffs' economic harms from Rule-induced egg price increases do not support standing unless Plaintiffs "are (1) ***directly regulated*** … or (2) ***prevented outright*** from obtaining the regulated product." Defs.' Resp. at 8 (citation omitted). But they cite only a single unpublished federal district court case decision from West Virginia for this proposition, which does not reflect Arizona's law of standing.[2] "A party has standing to sue in Arizona if, under all circumstances, the party possesses an interest in the outcome of the litigation"—a condition Plaintiffs satisfy. *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008) (citation omitted). And it is undeniable that Plaintiffs would have standing under the "commonsense economic realities" test of *Diamond Alternative Energy, LLC v. Env't Prot. Agency*, 145 S. Ct. 2121, 2136 (2025). They are "objects of the regulation," *id.* at 2135—being forbidden from buying non-compliant eggs and required to "verify with … suppliers that they are licensed" as complying with the Rule, PSOF ¶ 58.[3] Plaintiffs' injury is a "predictable, commonsense inferenc[e]," *Diamond Alt. Energy,* 145 S. Ct. at 2136, since they're prevented outright from obtaining conventional eggs (certainly in the amounts Union requires).

B. The Rule restricts Plaintiffs' right to buy non-cage-free eggs.

Defendants argue that the Rule does not restrict Plaintiffs' right to buy those eggs because "these are *not different products* in Plaintiffs' eyes." Defs.' Resp. at 6. Notably, Defendants' own expert has testified that "[c]age-free products are absolutely objectively

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[2] Moreover, *Karbal v. Arizona Department of Revenue,* 215 Ariz. 114 (App. 2007) (which Defendants cite later on) does not "us[e] similar logic," Defs.' Resp. at 8. *Karbal* involved a completely different issue of customers challenging a "business activity tax" assessed against businesses, not customers. Here, the Rule directly affects Plaintiffs by restricting what products they can buy, increasing egg prices, and requiring them to certify suppliers' compliance.

[3] Defendants say that "[t]his potential theory of injury was not timely disclosed, and it is unsupported." Defs.' Resp. at 8 n.3. But they do not explain how it is "unsupported," and the disclosure obligation applies to "information, a witness, or a document," Ariz. R. Civ. P. 37(c)(1), not to every single *legal argument* a party could make based on that evidence. Without question, the evidence itself was timely disclosed: it came from Defendants' own document production and 30(b)(6) deposition testimony. *See* PSOF ¶ 58 & Ex. 12–14.

different product[s] from conventional eggs because they are produced with different techniques and *whether the final consumer may perceive them as different or not,* they *are* different products by definition." Ex. 7 to PSOF (Ikizler Depo.) at 20:3–7 (emphasis added).

More fundamentally, however, Defendants' argument misses the point. Plaintiffs' own subjective preferences or beliefs about different products (and whether they personally "view [those products] as different") do not change the fact that the Rule prevents them from buying products they could otherwise lawfully buy. Buyers and sellers alike have a cognizable injury when laws prohibit the sale of a good or service. *See, e.g.*, *Freeman v. Corzine*, 629 F.3d 146, 154 (3d Cir. 2010). And Defendants cite no authority for their claim that a plaintiff's standing depends on whether he subjectively "perceive[s]" the restricted item as a "differentiated produc[t]" from others he might still be allowed to purchase. Defs.' Resp. at 6. On the contrary, a plaintiff has standing to challenge a restriction on the right to buy *any* product the plaintiff would otherwise buy. *See Freeman*, 629 F.3d at 154.

Here, undisputed evidence shows that Plaintiffs routinely buy conventional eggs in large quantities from major suppliers.[4] PSOF ¶¶ 51–55. That's precisely what the Rule will prohibit them from doing. Thus, Plaintiffs have standing.

Defendants also argue that the Rule "does *not* take … away" Plaintiffs' ability to buy conventional eggs because it "applies only to large producers with at least 20,000 egg-laying hens," and "[t]here are thousands of farms in Arizona and other states with *fewer* than 20,000 egg-laying hens." Defs.' Resp. at 6. But many of these eggs are not actually available to Plaintiffs. Those "thousands of small farms" include individuals who

[4] Additionally, Union sells eggs to its customers, some of whom *do* "view cage-free and caged-facility eggs as different products." Defs.' Resp. at 6. Because the Rule restricts those individuals' ability to buy and consume products they otherwise would, Union also "has derivative standing to assert the subsidiary right to acquire [conventional eggs] on behalf of [its] potential customers." *Teixeira v. County 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.").

keep pet chickens in their backyards. And out of all these "farms," Defendants admit that only "two have at least 3,000 hens," Defs.' Resp. at 7, while undisputed evidence shows that Plaintiffs alone purchase over 100,000 eggs per year (not to mention the millions of other Arizonans who consume conventional eggs). Defendants have adduced *no* evidence that these "small farm" eggs would actually be available to Plaintiffs under the Rule.

Defendants assert that the Rule's consequences "will not be realized until [it's] enforced." Defs.' Resp. at 7. But they cite no authority for this argument. On the contrary, "[a] case is … ripe if there is an actual controversy between the parties." *Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 280 ¶ 36 (2019). The Rule has been in place since 2022; its first phase took effect in October 2022. While Defendants have delayed *some* of its implementation, they have never indicated that they would change or repeal its core prohibition, which is the subject of Plaintiffs' challenge.

Finally, Defendants argue that Plaintiffs lack standing because the "Rule was *better* for Plaintiffs … than the anticipated ballot initiative." Defs.' Resp. at 7. But once again, they cite no authority (nor is there any) for the argument that a plaintiff lacks standing to challenge a government regulation just because some *worse* regulation may or may not have been passed by voters.

C. Plaintiffs have statutory standing.

In addition to having constitutional standing, Plaintiffs also have statutory standing under A.R.S. § 41-1034(A), which creates a broad right of action for "[a]ny person who is or may be affected by a rule" to seek "declaratory relief" on its validity. Defendants' narrow reading of this statute would render it a nullity by imposing the same test as for constitutional standing. At the very least, it would read key words out of the statute, ignoring that the Legislature deliberately broadened standing to include those "*affected* by a rule" (eschewing the "injury" test for constitutional standing) and those who only "*may* be affected" (not only those who definitely *are* affected). *See Nicaise v. Sundaram*, 245 Ariz. 566, 568 ¶ 11 (2019) ("[S]tatutory interpretation [must] give meaning, if possible, to every word and provision.").

Indeed, the Arizona Court of Appeals recently reaffirmed the broad statutory standing conferred by A.R.S. § 41-1034(A) in actions for declaratory relief, like this one. *See Ariz. Soc'y of Pathologists v. Ariz. Health Care Cost Containment Sys. Admin.*, 201 Ariz. 553, 557 ¶ 18 (App. 2002) ("The relevant APA provision permits '[a]ny person who is ... affected by a rule' to '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 [the Declaratory Judgments Act].'"). Like the plaintiffs in *Arizona Society of Pathologists*, plaintiffs here are clearly "affected by" the Rule.

Defendants' alternative reading of "may be" as "expand[ing] the temporal window in which an 'affected' plaintiff can challenge a rule," Defs.' Resp. at 5 n.1, ignores the ordinary meaning of "may," which expresses "contingency," "possibility[,] or probability." *May*, Merriam-Webster.com.[5] If the Legislature merely meant to change the *timing* of lawsuits, but still require definite harm for standing, it could have done so by referring to "any person who is or *will* be affected." By using the broader "may," however, it made clear that Plaintiffs have standing even if they don't prove with utter certainty that they'll be affected; it's enough to show likelihood or possibility. Plaintiffs have satisfied that test and they have standing.

II. Plaintiffs are entitled to summary judgment on their APA claims.

The Rule isn't specifically authorized by statute because its broad charge to regulate an entire industry (i.e., to "adopt rules for poultry husbandry and the production of eggs") contains no specific standards, and thus falls short of the statutory requirement that agencies regulate only as *specifically authorized*. Defendants argue that "if the Legislature orders an agency to regulate specific categories of conduct, and the agency does so, then the agency has acted in a manner 'specifically authorized by statute.'" Defs.' Resp. at 12. But that begs the question: it *assumes*, rather than proves, that the Legislature ordered the Department "to regulate specific categories of conduct." In fact, it does the opposite. By giving the Department carte blanche to regulate a whole industry however it

[5] https://www.merriam-webster.com/dictionary/may.

sees fit, Section 3-710 flunks the specificity test. Defendants' only attempt to add specificity to Section 3-710's language is based on "[l]egislative materials" suggesting that "poultry husbandry" may mean "the practice of breeding and raising poultry" (giving little more specificity than the statutory language) and may include private industry guidelines. Defs.' Resp. at 12. But Section 41-1030(D)(3) requires regulations to be "specifically authorized *by statute*," not by miscellaneous pieces of legislative history, industry guidelines, or agency ipse dixit.

The Rule is also not reasonably necessary to carry out the statutory purpose. Defendants' responses on this point fail for similar reasons: they rely on legislative history and ignore the Legislature's intent to hold agencies *more* accountable by imposing additional requirements on regulation. Defendants also misunderstand Plaintiffs' argument when they characterize it as "a constitutional criticism of the Legislature, not a criticism of the Department based on [Section] 41-1030(A)." Defs.' Resp. at 14. While the statute is *also* an unconstitutional delegation, the point here isn't that it's constitutionally defective. Rather, it's that the statutory language is insufficient *to justify the regulations.* While those two arguments focus on the same statutory language, they're distinct, and the Court can find the Rule invalid under Section 41-1030(D)(3) and Section 41-1030(A) without reaching the constitutional non-delegation claim. *See Hayes v. Cont'l Ins. Co.*, 178 Ariz. 264, 273 (1994) ("[I]f possible we construe statutes to avoid unnecessary resolution of constitutional issues.").

Contrary to Defendants' argument, Plaintiffs' APA claims do not require retroactive application because they do not "disturb[] vested substantive rights" or "chang[e] the law that applies to completed events." *State v. Vergara*, 568 P.3d 764, 771 ¶ 26 (App. 2025). Plaintiffs seek only *prospective* relief. Also, Defendants' retroactivity argument overlooks that the Department has effectively amended the Rule repeatedly *since* the statutes' effective date by changing the Rule's compliance and enforcement dates. Simply put, Plaintiffs' challenge has nothing to do with retroactivity, because the Rule is invalid as it stands *now* and Plaintiffs are entitled to prospective relief.

III. Plaintiffs are entitled to summary judgment on their non-delegation claim.

Defendants raise three arguments in response to Plaintiffs' non-delegation claim. All are unavailing.

First, they claim that it's "evident" from the terms "poultry husbandry" and "production of eggs sold in this state" that regulations issued pursuant to Section 3-710(J) must "promote animal welfare and consumer safety," despite earlier acknowledging that these are simply "categories of conduct." Defs.' Resp. at 12–15. But the terms "poultry husbandry" and "production of eggs sold in this state" don't carry this meaning on their own. Husbandry means "farming, in the sense of operating land to raise provisions." *Husbandry*, Black's Law Dictionary 876 (4th ed. 1968); *see also Husbandry*, Webster's New International Dictionary (2d ed. 1942) ("The business of a husbandman, comprehending the various branches of agriculture; farming"); Pls.' Mot. at 8. Production is the "[a]ct or process of producing, bringing forth, or exhibiting to view." *Production*, Webster's New International Dictionary (2d ed. 1942). What is evident from these definitions is that the terms are neutral descriptors of a category of activity. They provide no standards, guidelines, or other bounds on AZDA's development of regulations for these activities.

Second, Defendants argue that the statute need not actually provide standards because they can be inferred from "[s]tatutory context and history." Defs.' Resp. at 15–16. But even if the standards aren't "set forth in express terms," they still must be "inferred *from the statutory scheme*." *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971) (emphasis added). There must be *some* statutory text Defendants can point to from which their suggested standards can be gleaned. But Defendants identify none. They simply rely on the supposedly "inherent" meaning in Section 3-710(J) and the "[s]tatutory context[,] history[,] … and the Department's consistent understanding." Defs.' Resp. at 15–16. Courts don't rely on legislative history "when the correct legal interpretation can be determined from the plain statutory text and the context of related statutes." *Aroca v. Tang Inv. Co. LLC*, 565 P.3d 1054, 1061 ¶ 29 (Ariz. 2025) (citation omitted). Here, the text

plainly says AZDA shall develop whatever rules it decides are appropriate for poultry husbandry and egg production. A.R.S. § 3-710(J).

Defendants' approach is refuted by *Arizona Mines Supply*. The court said a "statute" must still establish a "sufficient basic standard, i.e. a definite policy and rule of action which will serve as a guide for the administrative agency." 107 Ariz. at 205 (citation omitted). The statute in *Arizona Mines* accomplished this, according to the court, by requiring that pollution control regulations be both "necessary and feasible." *Id.* at 206. That phrase placed at least some guardrails on the regulations; pollution control measures would have to be achievable (feasible) and limited to controlling pollution no more than is required (necessary). Here, Section 3-710(J) doesn't provide any definite policy or rule guiding the regulation of poultry husbandry and egg production. In fact, Defendants concede that these are merely "categories of conduct." Defs.' Resp. at 13.

Defendants' own hypothetical demonstrates the substantial difference between Section 3-710(J) and the statutory standards in *Arizona Mines*. Defendants modified Plaintiffs' original hypothetical to imagine a statute that authorized an agency to "make rules 'for care of expecting mothers in hospitals with at least 20,000 patients'" where the agency was "created to protect maternal health" and "legislative materials" identified relevant "industry guidelines." Defs' Resp. at 16. They assert that it's "normal" for the hypothetical agency to "balance values in complex fields," here deciding between guaranteeing maternal health through an impossible standard or reducing the guarantee to have "realistic" standards. *Id.* But this is precisely the guidance that the statute in *Arizona Mines* ***provided***. Statutory guidance is necessary to prevent agencies from engaging in the legislative exercise of balancing competing values. But Defendants identify *no* such "fixed primary standards" in Section 3-710(J). *DeHart v. Cotts*, 99 Ariz. 350, 351 (1965).

Defendants also assert without explanation that *Hernandez v. Frohmiller*, 68 Ariz. 242 (1949), and *State v. Marana Plantations, Inc.*, 75 Ariz. 111 (1953)—two cases that held statutes were unconstitutional delegations—are distinguishable. Defs.' Resp. at 16–17. In fact, the unconstitutionality of the statute in *Hernandez* (to "regulate all conditions

of employment") is directly comparable to that of Section 3-710(J). Likewise, the statute in *Marana Plantations* provided substantially *more* guidance than Section 3-710(J) does. In that case, the statute authorized an agency to "regulate sanitation and sanitary practices in the interests of public health." *Marana Plantations*, 75 Ariz. at 114. The phrase "interests of public health" provided *some* guidance to the agency (although it was constitutionally insufficient). Section 3-710(J) doesn't even have that.[6]

Third, Defendants argue that *Roberts v. State*, 253 Ariz. 259 (2022), was not about whether a policy is a major question, but just about whether an agency decided to "incorporate an entire federal statutory scheme" into state law. Defs.' Resp. at 17. But *Roberts* explicitly applied its major questions doctrine analysis to the substantive policy matter by characterizing the agency's decision as equivalent to "determining whether time spent on certain activities is compensable." 253 Ariz. at 270 ¶ 40. *Roberts* explained that this "is the very definition of the type of major policy question that the legislature alone may determine." *Id.*

Changing the housing requirements for egg-laying hens in Arizona and those producing eggs sold in Arizona is at least as major as whether law enforcement overtime is compensable, the issue in *Roberts*. The Rule required investments of hundreds of millions of dollars by egg producers, caused an increase in labor costs of up to 41%, and has had its implementation delayed for two years—with a potential extension until 2034—because it will increase egg prices. DSOF ¶¶ 26–28; 33–34.

CONCLUSION

The Court should grant summary judgment to Plaintiffs.

[6] And contrary to Defendants' suggestion, *Arizona Mines* would not have changed the outcome in these cases because it still required statutes to contain "a definite policy and rule of action." 107 Ariz. at 205.

RESPECTFULLY SUBMITTED this 19th day of August 2025.

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CERTIFICATE OF SERVICE

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