

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC. and ALLIED PRODUCERS' COOPERATIVE, individually and on behalf of its members,

Plaintiffs,

v.

ANDREA JOY CAMPBELL, in her official capacity as Attorney General of Massachusetts, and ASHLEY RANDLE, in her official capacity as Massachusetts Commissioner of Agriculture,

Defendants.

Case No. 1:23-cv-11671-WGY

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

REQUEST FOR ORAL ARGUMENT

Plaintiffs Triumph Foods, LLC ("Triumph"), together with Christensen Farms Midwest, LLC ("Christensen Farms"), The Hanor Company of Wisconsin, LLC ("Hanor"), New Fashion Pork, LLP ("NFP"), Eichelberger Farms, Inc. ("Eichelberger"), and Allied Producers' Cooperative ("APC"), both in its official capacity and on behalf of their members (collectively, "Farmer Plaintiffs") will and hereby do move for an order granting preliminary injunction against Defendants Andrea Joy Campbell, in her official capacity as Attorney General of Massachusetts ("Campbell") and Ashley Randle, in her official capacity as Massachusetts Commissioner of Agriculture ("Randle") (collectively, "Defendants").

Pursuant to Federal Rule of Civil Procedure 65(a) and L.R. 7.1, Plaintiffs hereby respectfully move this Court for a preliminary injunction order to prevent Defendants and their officers, agents, servants, employees, attorneys and any other persons who are in active concert or participation with Defendants, from enforcing Massachusetts' Question 3 Minimum Size

Requirements for Farm Animal Containment (“Question 3” or the “Act”) against Plaintiffs and similarly situated pig farmers and pork processors. The justification for the requested preliminary injunction is more completely explained in the accompanying Memorandum of Points and Authorities in Support of this Motion, together with supporting Declarations.

For the sake of judicial efficiency and convenience, the summarized key facts and law relied upon in support of this request are as follows:

1. The Act established minimum size requirements for egg-laying hens, breeding pigs, and calves raised for veal (the covered animals) to “prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of Massachusetts consumers, increase the risk of foodborne illness, and have negative fiscal impacts on the Commonwealth of Massachusetts.” Mass. Gen. Laws Ann. Ch. 129 App., § 1-1, *et seq.* It is unlawful for a “business owner or operator to knowingly engage in the sale within the Commonwealth of Massachusetts of any ... Whole Pork Meat¹ that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner, or is the meat of the immediate offspring of a covered animal that was confined in a cruel manner.” *Id.* at § 1-3. This sale prohibition, effective August 15, 2022, is without distinction regarding where the Whole Pork Meat originated. Acts (2021) Chapter 108 § 12.²

2. Specifically, “[c]onfined in a cruel manner” means confining a “breeding pig in a manner that prevents the animal from lying down, standing up, fully extending the animal’s limbs or turning around freely” (the “Minimum Size Requirements”). *Id.* at § 1-5.

¹ “Whole pork meat”, any uncooked cut of pork, including bacon, ham, chop, ribs, riblet, loin, shank, leg, roast, brisket, steak, sirloin or cutlet, that is comprised entirely of pork meat, except for seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives; provided, however, that “whole pork meat” shall not include combination food products, including soups, sandwiches, pizzas, hot dogs or other similar processed or prepared food products, that are comprised of more than pork meat, seasoning, curing agents, coloring, flavoring, preservatives and similar meat additives. Mass. Gen. Laws Ch. 129 App., § 1-5

² See also Matt Murphy, *House’s Hen Welfare Bill Aims to Assure Egg Supply* (Oct. 6, 2021), <https://www.statehousenews.com/news/20211859>

3. The Massachusetts Department of Agricultural Resources promulgated mandatory regulations for implementing the Act, becoming effective June 10, 2022 (the “Regulations”). *See* MA REG TEXT 610066 (NS). Even today, the Regulations are not final. Defendant Campbell’s office continues to try and clarify the vagueness within the Act. Defendants agreed through ongoing dialogue to seek further amendment of the Regulations to allow for transshipment out of the state and an extension of the sell-through period to coincide with the expiration of the existing stay of enforcement, set to expire August 23, 2023.

4. Triumph is a farmer-owned, pork processor producing high-quality pork products sold locally, nationally, and internationally. Ex. 1 ¶ 5. Triumph processes 5.7 million pigs annually, which produces 1.45 *billion* pounds of pork each year. *Id.* at ¶ 8. Each Farmer Plaintiff executes Hog Procurement Agreements (“HPAs”) with Triumph, requiring the farmer to sell a quota of hogs commensurate with the farmer’s equity ownership percentage or risk damages, even the loss of equity ownership in Triumph. *Id.* at ¶ 11.³

5. Triumph sells its pork through a Marketing Agreement with Seaboard Foods (“Seaboard”), who makes all sales decisions, often on a national-account basis. *Id.* ¶¶ 15-18.⁴ Triumph will process, package, and distribute the pork cuts directly into Massachusetts for those customers. *Id.* at ¶ 19. If Seaboard is unable to supply an order that demands compliant Whole Pork Meat⁵, Seaboard and Triumph risk losing the profits realized from the entire nationwide contract with those entities. *Id.* ¶ 20.

³ For example, Christensen Farms owns 42.1% of Triumph and therefore must provide 42.1% of the total hogs processed by Triumph on an annual basis. *See* Ex. 4, Declaration of Greg Howard (“Christensen Farms Decl.”) ¶¶ 6, 20; Ex. 1 ¶ 13.

⁴ Triumph cannot control whether Seaboard sells to California or Massachusetts under the existing Marketing Agreement. Ex. 1 ¶ 16. Triumph is specifically prohibited from engaging in any selling or marketing, directly or indirectly, any pork products produced by Triumph under the Marketing Agreement. *Id.*

⁵ “Pork Meat” carries the same definition as noted in the Plaintiffs’ Complaint. *See* ECF No. 17, ¶ 32.

6. Most of Farmer Plaintiffs' operations do not – and cannot - comply with the Act. Ex. 4 ¶ 23.⁶ Even though some of Farmer Plaintiffs' farms comply, it would not produce enough pork to sustain Triumph's Massachusetts' demand. Ex. 4 ¶ 22. Seaboard is demanding more Proposition 12⁷ pork than what Triumph and the Farmer Plaintiffs have available or could possibly make available. *Id.* at ¶ 30.

7. Farmer Plaintiffs are using industry-best and science-based practices to protect the health of the breeding pig and offspring. *See* Ex. 7, Declaration of Dr. Janeen Salak-Johnson (“Johnson Decl.”), ¶¶ 19-20. The Act will require group pens, which harm the health and welfare of the breeding pigs. *Id.* at ¶¶ 38, 44-46, 49, 62. Further, group confinement substantially harms farmer employees by threatening their safety. *Id.* at ¶ 70.

8. Plaintiffs have brought an action under 42 U.S.C. § 1983 against Defendants, challenging the constitutionality of the Act and its Regulations. As shown in the Memorandum and within the materials submitted in support of this Motion, the Act directly targets out-of-state farmers and processors in violation of the dormant Commerce Clause of the United States Constitution, running afoul of the very antidiscrimination principle Justice Gorsuch reaffirmed as the central “core” to Commerce Clause jurisprudence in *NPPC v. Ross*, 143 S. Ct. 1142 (2023).

9. Plaintiffs also have asserted constitutional violations under the United States Constitution's Privileges and Immunities Clause, Full Faith and Credit Clause, Due Process Clause, and Import-Export Clause.

10. Plaintiffs further assert and request a declaration that the Act is preempted through the Supremacy Clause, Article VI, Clause 2 of the United States Constitution by the

⁶ *See also* Ex. 2 ¶ 19, 22 (only approximately 11% of current operations); Ex. 5, Declaration of Kenny Brinker (“APC Decl.”), ¶ 13; Ex. 6, Declaration of Mike Roth (“Eichelberger Decl.”), ¶ 19.

⁷ Laws like California's Proposition 12, require the same Minimum Size Requirements of Question 3 *plus* a minimum amount of usable floor space per sow. Cal. Health & Safety Code § 25991(e).

Federal Meat Inspection Act, as well as the Packers & Stockyards Act as it is expressly preempted by the express preemption clause identified at 21 U.S.C. § 678 and further violates conflict preemption principles.

11. Plaintiffs further assert that the Regulations implemented to enforce the underlying Act, should be declared invalid under the Massachusetts Administrative Procedure Act, G.L. c. 30A and G.L. c. 231A. Because Plaintiffs are likely to succeed on the merits in challenging the constitutionality of the underlying Act, they further should be entitled to a preliminary injunction staying the enforcement of the Regulations, too.

12. Pursuant to Fed R. Civ. P. 65(a), a preliminary injunction may be entered on notice to the adverse party. In granting a preliminary injunction, a district court must consider the following factors: (1) a likelihood of success on the merits; (2) the likelihood of irreparable harm absent interim relief; (3) a balance of equities in the plaintiff's favor; and (4) service of the public interest. *Walters v. Bos. City Council*, No. CV 22-12048-PBS, 2023 WL 3300466, at *8 (D. Mass. May 8, 2023); *see also Maine Forest Prod. Council v. Cormier*, 51 F.4th 1, 5 (1st Cir. 2022) (same).

13. Plaintiffs' Amended Complaint, together with its supporting Memorandum in Support of Motion for Preliminary Injunction and supporting Declarations, demonstrate Plaintiffs' entitlement to a preliminary injunction order preventing the implementation and enforcement of Question 3 and its Regulations before it wreaks devastating and unconstitutional irreparable harm upon Plaintiffs and the nationwide pork production industry at large.

REQUEST FOR ORAL ARGUMENT

Plaintiffs hereby, pursuant to Local Rule 7.1(b)(4)(d), requests this Court fix a time and place for oral argument upon Plaintiffs' Motion.

WHEREFORE, Plaintiffs respectfully request the Court enter a preliminary injunction order as set forth herein. Specifically, the Court should issue an order prohibiting the enforcement of Question 3, its policies, practices and customs by Defendants, employees and agents, and all persons acting in privity and/or in concert with them pending resolution of Plaintiffs' constitutional claims before this Court.

Dated: August 7, 2023.

TRIUMPH FOODS, LLC, CHRISTENSEN FARMS MIDWEST, LLC, THE HANOR COMPANY OF WISCONSIN, LLC, NEW FASHION PORK, LLP, EICHELBERGER FARMS, INC. and ALLIED PRODUCERS' COOPERATIVE, individually and on behalf of its members, Plaintiffs.

By: /s/ Ryann A. Glenn

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Attorneys for Plaintiffs

CERTIFICATE PURSUANT TO LOCAL RULE 7.1(a)(2)

I certify that, on July 24 , 2023, I conferred with Defendants' counsel and attempted in good faith to reach agreement on this motion, but was unable to reach a resolution.

/s/ Ryann A. Glenn
Ryann A. Glenn

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of August 2023, the foregoing document was electronically filed with Clerk of the Court using the CM/ECF system which sent electronic notification of such filing to all CM/ECF Participants.

/s/Ryann A. Glenn
Ryann A. Glenn