IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

PLANT BASED FOODS ASSOCIATION, and TURTLE ISLAND FOODS SPC d/b/a THE TOFURKY COMPANY,

Plaintiffs,

v.

KEVIN STITT, in his official capacity as Oklahoma Governor, and BLAYNE ARTHUR, in her official capacity as Oklahoma Commissioner of Agriculture,

Defendants.

Case No. CIV-20-938-F

PLAINTIFFS' SUPPLEMENTAL BRIEF

INTRODUCTION

This brief responds to the Court's September 21, 2023, Order (Doc. 190) that Plaintiffs, the Plant Based Foods Association (PBFA) and Turtle Island Foods SPC d/b/a The Tofurky Company (Tofurky), address their standing to challenge the Meat Consumer Protection Act (Act). In clarifying their standing, Plaintiffs show that PBFA represents the interests of members that sell and advertise both plant- *and* animal-based meat products, as well as the interests of members that only sell and advertise plant-based meat products.

ARGUMENT

Tenth Circuit precedent "mandates that we assume, during the evaluation of the plaintiff's standing, that the plaintiff will prevail on his merits argument." *Rio Grande Found. v. Oliver*, 57 F.4th 1147, 1164 (10th Cir. 2023) (quoting *Day v. Bond*, 500 F.3d 1127, 1137 (10th Cir. 2007)). For this reason, a determination of the merits of Plaintiffs' claims under the guise of resolving standing is inappropriate. "For purposes of standing, the question cannot be whether the Constitution, properly interpreted, extends protection to the plaintiff's asserted right or interest. If that were the test, every losing claim would be dismissed for want of standing." *Initiative & Referendum Inst. v. Walker*, 450 F.3d 1082, 1092 (10th Cir. 2006) (en banc).

Here, Plaintiff PBFA alleges both organizational and associational injuries for all claims, these injuries are fairly traceable to the Act, and can be redressed by this Court. Additionally, for every claim, Tofurky alleges standing in its own right as an individual plaintiff but also as a member of PBFA. For simplicity, and because an organization's members must have standing in their own right for the organization to assert associational standing, Tofurky's injuries are addressed below in the context of it being a member of PBFA.

I. PBFA Adequately Alleges Associational Standing.

Associations have standing to sue on behalf of their members when they meet each of the three factors. *See* Doc. 122 at 7; *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000). Here, the second and third factor of this test are not reasonably in question: the Act threatens the ability of plant-based companies to do business, which is germane to PBFA's mission of supporting those companies' ability to do business. *See generally* Doc. 122-1. And, since PBFA only asks for declaratory and injunctive relief, the participation of its individual members is not required. *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 553 (1996). As the Court notes, then, the crux of the issue is whether PBFA's members would otherwise have standing to sue in their own right. Doc. 190 at 3–4. For the reasons that follow, PBFA has demonstrated that its members have standing.

PBFA's members experience a variety of harms due to the Act. Some sell both plant-based and animal-based meat products, and therefore face prosecution under the plain text of the Act. Others have a credible fear of prosecution because the state agency charged with enforcement interprets the Act as applying to them directly—and Oklahoma courts are likely to do the same. Finally, beyond *Driehaus*, PBFA members also experience severe economic injuries as a result of the Act, which are by themselves sufficient to establish pre-enforcement standing.

A. PBFA's Members' Injuries Meet the *Driehaus* Standard for Pre-Enforcement Review.

In a pre-enforcement case, Plaintiffs can demonstrate injury-in-fact when they (1) intend to "engage in a course of conduct arguably affected with a constitutional interest;" (2) the course of action is arguably "proscribed by [a] statute;" and (3) "there exists a credible threat of prosecution." *Driehaus*, 573 U.S. at 159.

Here, Plaintiffs filed suit to protect their constitutional rights. *See* FAC. Despite not being able to comply with the Act and not even knowing *how* to comply with the Act, Plaintiffs continue to sell and market their products as they did before the Act's passage and do not intend to stop. Doc. 122-3 ¶ 3; Doc. 174-10 ¶ 14; Doc. 174-11 ¶ 11. Accordingly, prong one of the *Driehaus* test is satisfied, and for the reasons that follow, Plaintiffs satisfy the remaining factors.

1. PBFA members' actions are "arguably proscribed" by the Act.

a. Some members sell both plant- and animal-based products.

The Court has asked whether any of PBFA's members advertise, offer for sale, or sell "meat," such that the Act applies to them directly. Doc. 190 at 2 (quoting Okla. Stat. tit. 2, § 5-107(B)(2), (C)). The answer is yes. As set forth in the Declaration of PBFA CEO Rachel Dreskin, PBFA represents members, like Palacios.US, that advertise, offer for sale, and sell *both* animal- and plant-based meat products. Ex. 1, ¶ 3.

Palacios sells plant-based meat products in packaging that complies with federal guidelines, but which is "arguably proscribed" by the Act. Doc. 190 at 3 (quoting *Driehaus*, 573 U.S. at 159). Its "Plant Based BBQ Chorizo" and "Plant Based Burger" labels, for example, arguably do not "display that the product is derived from plant-based sources in type that is *uniform in size and prominence* to the name of the product" because "plant based" is not printed in the same size as "chorizo" or "burger." Okla. Stat., tit. 2 § 5-107(C)(1) (emphasis added); *see* Ex. 1, ¶ 5; *but see* Doc. 174 at 30–35 (describing how the Act is unconstitutionally vague).[1]

[1] Palacios' advertisements can also attract enforcement, especially because the Act's 'safe-harbor' provision for labels that abide by the "size and prominence" requirements does not extend to marketing materials. *See* Doc. 174 at 32. This includes marketing materials on websites and social media, both of which are always accessible in Oklahoma. *See* Doc. 174 at 11–14; Ex. 1, ¶ 6–7; *see also* Yates Dep. at 26:17-24, 54:17-

As a result, Palacios and other PBFA members' conduct is "arguably proscribed by a statute," and they face a "credible threat of prosecution" on that basis. Doc. 190 at 3 (quoting *Driehaus*, 573 U.S. at 159).

b. The Act arguably applies to PBFA's members that only sell plant-based meat.

This Court has proffered a narrow reading of the Act that limits its scope solely to persons that engage in "advertising, offering for sale or selling *meat*," where "meat is limited to "any edible portion of livestock or part thereof." Doc. 190 at 2 (quoting Okla. Stat. tit. 2, § 5-107(B)(2), (C)). This reading is inconsistent with both the legislative intent and interpretation of the Act by the enforcing agency.

Under Oklahoma's rules of statutory construction,[2] the primary rule "is to ascertain and give effect to the legislative intent." *In re De-Annexation of Certain Real Prop. from City of Seminole*, 2004 OK 60, ¶ 18, 102 P.3d 120, 124. Importantly, it is a "long-standing rule of statutory construction followed [in Oklahoma] that the manifest intent of the legislature *will prevail over the literal import of the words*." *Id.* ¶ 18 n. 36 (emphasis added); *Maule v. Indep. Sch. Dist. No. 9*, 1985 OK 110, ¶ 11, 714 P.2d 198, 203 (construing law to achieve legislature's "overriding" intent, even though that interpretation departed from statute's express language because "inept or incorrect choice of words in a statute will not be construed and applied in a manner which would destroy the real and obvious purpose of the statute."). Here, there is no dispute between the

55:1 (acknowledging that ODAFF investigators review social media postings to find violations of law).

[2] It is ultimately up to Oklahoma courts and their standards of construction to determine the meaning of the Act. *See Phelps v. Hamilton*, 59 F.3d 1058, 1071 (10th Cir. 1995) (stating federal courts apply state rules of statutory construction in interpreting state statutes); *see also Johnson v. Fankell*, 520 U.S. 911, 916 (1997) ("Neither this Court nor any other federal tribunal has any authority to place a construction on a state statute different from the one rendered by the highest court of the State.").

parties that the legislative intent was to regulate alleged "deceptive labeling on plant-based meat alternatives," that allegedly "can be confusing for shoppers looking to purchase meat-based items at the grocery store." OK S. News Rel., 10/27/2020 *available at* Westlaw. This intent appears in the Act's language as well, which broadly seeks to preclude the "use of any untrue, misleading or deceptive" representations of "meat," and specifically excludes plant-based products *only if* "the packaging displays that the product is derived from plant-based sources in type that is uniform in size and prominence to the name of the product." Okla. Stat. tit. 2, § 5-107(C)(1).[3]

Additionally, in Oklahoma the "[s]tatutory construction by agencies charged with the law's enforcement is given persuasive effect especially when made shortly after the statute's enactment." *See, e.g.*, *McClure v. ConocoPhilips Co.*, 2006 OK 42 ¶ 19 (Okla. 2006). Here, the agency charged with enforcing and regulating the Act has indicated it interprets the law to apply to plant-based companies regardless of whether they also sell animal-based meat. Doc. 174 at 31 nn. 15–18 (evidence regarding both legislative and enforcement agency intent and understanding of act showing intention to enforce it against solely plant-based companies in absence of judgment to the contrary). ODAFF's view gives rise to a reasonable fear of enforcement by plaintiffs, which is all that is required to pass the standing hurdle.[4]

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[3] There would be no need to create the safe-harbor for plant-based products if the Act wasn't intended to apply to them. Limiting the scope only to plant-based products that were also sold by the same person selling slaughtered-meat would allow companies like Tofurky to avoid the Act while requiring resellers such as grocery stores to abide by it: an arguably irrational result. *E.g.*, *Maule*, 1985 OK 110 ¶ 11.

[4] In any event, regardless of whether the Act can be used to prosecute PBFA's members directly, those members can be charged for aiding and abetting violations of the Act. Defendants testified, and do not dispute, that the Act carries criminal penalties. *Compare* Doc. 174, Pls.' Statement of Uncontested Facts No. 15; *with* Doc. 182, Defs' Response to Plaintiffs' Statement of Facts ¶ 7. Under Oklahoma criminal law, all persons who aid and

As explained above, the Act arguably applies to PBFA members that only sell plant-based products. Those members' conduct is arguably proscribed by the Act's prohibitions. To take one example, Tofurky and other PBFA members sell products whose labels may not comply with the vague requirements of the Act, and as such, engage in conduct "arguably proscribed" by the challenged statute. Doc. 190 at 3 (quoting *Driehaus*, 573 U.S. at 159). Tofurky sells a "Plant-Based Burger" where the phrase "plant-based" appears much smaller than the word "burger." *See* FAC at 9. Although the Act is so vague that ODAFF's representatives themselves were unable to proffer an explanation of its meaning under oath, Doc. 174-4 (Yates Dep.) at 70:11-71:6, "plant-based" and "burger" are not "in type that is uniform in size and prominence," so Tofurky's label arguably could not fall under the Act's "safe harbor" provision. Okla. Stat., tit. 2 § 5-107(C)(1). Given that the Act arguably applies to Tofurky and other PBFA members, and that those members' conduct is arguably proscribed by the Act, the second *Driehaus* prong is satisfied.

2. Palacios, Tofurky, and other PBFA members face a "credible threat of prosecution" under the Act.

Because Palacios', Tofurky's, and other PBFA members' conduct is "arguably

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abet in the commission of a crime "are principals." Okla. Stat. tit. 21, § 172. "[O]nly slight participation is needed to change a person's status from a mere spectator into an aider and abettor." *United States v. McFarland*, 726 F. App'x 709, 714 (10th Cir. 2018) (quotation omitted). Plaintiffs disseminate their products to retailers and distributors that sell both plant-based and livestock-based products in Oklahoma. Doc. 174-6 ¶ 4; Doc 174-8 ¶ 5; Doc 174-9 ¶ 6; Doc 174-10 ¶ 10; Doc 174-11 ¶ 4. Some of PBFA's members hire employees to do the same. Ex. 2, Athos Decl. ¶ 8. Pursuant to Okla. Stat. tit. 21, § 172, the Act can arguably be applied to prosecute PBFA's members for aiding and abetting those violations. *See Am. Broad. Cos., Inc. v. Heller*, No. 2:06-CV-01268, 2006 WL 3149365, at *6 (D. Nev. Nov. 1, 2006) (company-plaintiffs had credible fear of "enforcement and prosecution for hiring and encouraging [their employees]" to violate state law that did not apply to them directly, because they could be prosecuted for aiding and abetting those violations).

proscribed by a statute," they face a "credible threat of prosecution" on that basis. Doc. 190 at 3 (quoting *Driehaus*, 573 U.S. at 159); *Cressman v. Thompson*, 798 F.3d 938, 947–48 (10th Cir. 2015) ("[A] plaintiff has standing when his actions are made illegal by the plain language of the statute.") (quotations omitted). That threat is magnified by their knowledge that the Act was designed to target plant-based manufacturers directly, *see* Ex. 3, Flint Decl. ¶¶ 2–6; *see also* Doc. 174 at 7–11; Pls.' Statement of Uncontested Facts Nos. 8, 13, 14, 19, and that the state agency responsible for enforcement interprets the Act in that manner. *See* Yates Dep. at 39:2-15 ("[T]hat's who the Act would apply to, the manufacturer of the product.").

Here, "[t]he State has not suggested that the newly enacted law will not be enforced, and we see no reason to assume otherwise." *Am. Booksellers Ass'n, Inc. v. Schiff*, 868 F.2d 1199, 1200 (10th Cir. 1989) (quoting *Virginia v. Am. Booksellers Ass'n*, 484 U.S. 383 (1988)). Instead, far from "disavow[ing] an intent to prosecute," *Peck v. McCann*, 43 F.4th 1116, 1133 (10th Cir. 2022), ODAFF testified that it is waiting "until this litigation is resolved" to begin enforcement. Yates Dep. at 60:2-5. In these circumstances, where there is no "long institutional history of disuse," *Mangual v. Rotger-Sabat*, 317 F.3d 45, 57 (1st Cir. 2003), "the existence of [the Act] implies the threat of its enforcement." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 902 (10th Cir. 2012).

B. The Act Causes PBFA's Members to Suffer Economic Injuries.

Where a business's compliance with a law imposes economic injuries on it, a business has pre-enforcement standing[5] to challenge the law. Even if a business has yet to expend financial resources, a business's exposure to potential financial liability suffices

[5] Here, pre-enforcement review of economic injuries is not reviewed under the *Driehaus* standard.

for injury-in-fact in the pre-enforcement context. *Chamber of Com. v. Edmonson*, 594 F.3d 742, 758 (10th Cir. 2010) (citing *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128–29 (2007)). Courts agree that potential economic harm to a business is a cognizable pre-enforcement injury. *See Carpenters Indus. Council v. Zinke*, 854 F.3d 1, 5 (D.C. Cir. 2017) ("Economic harm to a business clearly constitutes an injury-in-fact. And the amount is irrelevant. A dollar of economic harm is still an injury-in-fact for standing purposes.") (citing *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 464 (2017)); *Hays v. City of Urbana*, 104 F.3d 102, 104 (7th Cir. 1997) ("[B]usinesses potentially affected by a regulation may pursue pre-enforcement challenges to learn whether they must incur the costs of compliance.") (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 153–54 (1967)); *Nat'l Rifle Ass'n of Am. v. Magaw*, 132 F.3d 272, 287 (6th Cir. 1997) ("Absent the availability of pre-enforcement review, these plaintiffs must either terminate a line of business, make substantial expenditures in order to comply with the Act, or willfully violate the statute and risk serious criminal penalties.").

The passage of the Act has considerably impacted Tofurky and other PBFA members' businesses, as the Act requires that Plaintiffs redesign their labels, packages, imagery, and advertising to comply with the vague language of the Act—or otherwise face penalties—causing Plaintiffs immediate economic harm. Tofurky and other PBFA members submitted declarations with examples stating that the Act would impose costs that otherwise would not exist under federal labeling regulations, which they currently follow. These potential costs include, for example: designing new labels and creating new packaging, Doc. 174-6 ¶ 12; Doc. 174-8 ¶ 12; disposing of old packaging, Doc. 174-6 ¶ 12; loss of distribution partners due to non-compliant labels, Doc. 174-6 ¶ 14; Doc. 174-8 ¶ 13; and the development of a new marketing scheme, Doc. 174-6 ¶ 12; Doc. 174-8 ¶ 13.

The record reflects substantial costs and burdens associated with compliance (and non-compliance) under the Act, and these economic harms establish the minimal requirement of injury in fact. *See Craig v. Boren*, 429 U.S. 190, 194 (1976). Already, Plaintiffs have been forced to divert time and energy into determining how the Act will impact labeling, advertising, and relationships with their distributors and retailers—including reviewing potential contingent liabilities Plaintiffs will be responsible for due to their contractual agreements with distributors and retailers. Ex. 2, ¶ 5. That Plaintiffs have already had to manage risks caused by the Act—even though enforcement of the Act has yet to begin—shows the concreteness of the economic harms Plaintiffs face.

C. The Act Exposes Tofurky to Contingent Liability.

Courts—"both explicitly and implicitly—have recognized that contingent liability may present an injury in fact."[6] *Protocols, LLC v. Leavitt*, 549 F.3d 1294, 1299 (10th Cir. 2008). In *Protocols*, plaintiffs were consultants that structured workers' compensation claims settlements, and they argued that a new government memo misinterpreted Medicare laws in such a way that could result in past settlements they arranged being rejected. *Id.* at 1295. Because plaintiffs could potentially have to repay their consulting fees for these likely no-longer valid settlements, they were exposed to contingent liability they could not control. *Id.* at 1299. Although plaintiffs' contingent liability "by definition" had not come to pass, the effects of a contingent liability were "certainly

[6] *See, e.g.*, *Edmonson*, 594 F.3d at 758 ("It is hardly controversial that exposure to liability constitutes injury-in-fact."); *Lac Du Flambeau Band of Lake Superior Chippewa Indians v. Norton*, 422 F.3d 490, 498 (7th Cir. 2005) ("[T]he present impact of a future though uncertain harm may establish injury in fact for standing purposes."); *Cent. Ariz. Water Conservation Dist. v. U.S. E.P.A.*, 990 F.2d 1531, 1538 (9th Cir. 1993) (finding that even where the extent of the economic harm "is not readily determinable," if the record shows a law "will likely cause Petitioners *some amount* of pecuniary harm" given their contractual obligations, this "economic injury is sufficiently concrete and imminent." (emphasis in original)).

actual or imminent" and sufficient to confer standing. *Id.* at 1299–300 (quoting *Clinton v. City of New York*, 524 U.S. 417, 431 (1998) ("The revival of a substantial contingent liability immediately and directly affects the borrowing power, financial strength, and fiscal planning of the potential obligor.")).

Even if the Court were to find the Act does not apply to Plaintiffs that only sell or advertise plant-based meats—such as Tofurky and certain other PBFA members—these Plaintiffs still suffer injury from the Act due to their contractual liabilities with distributors and retailers that sell and advertise both animal- and plant-based meats. For example, in exchange for distributing and selling its products, Tofurky has agreed to indemnify its distributors and retailers for any losses, penalties, and damages "for violations of laws regarding labeling, packaging, sales, and advertising and promotional materials created by Tofurky." Ex. 2, ¶ 5. Because Tofurky's distributors and retailers determine where Tofurky products are sold, Tofurky has no way of preventing its products from reaching Oklahoma shelves, unless it ceased selling its products in the United States entirely. *Id.* ¶ 6; 174-6 ¶ 15. Faced with the options of closing up shop or waiting to see what losses Tofurky is responsible for, Tofurky is already suffering injury from the Act. These indemnification clauses are contingent liability sufficient to confer standing.

II. PBFA has Sufficiently Alleged Organizational Standing.

It is well established that when a defendant's challenged actions "perceptibly impair" an organization's ability to fulfill its mission, "there can be no question that the organization has suffered injury in fact." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). This standard is not demanding. "Such concrete and demonstrable injury to the organization's activities—with the consequent drain on the organization's resources—

constitutes far more than simply a setback to the organization's abstract social interests." *Id.* "That the alleged injury results from the organization's noneconomic interest in encouraging [a particular policy preference] does not effect the nature of the injury suffered, and accordingly does not deprive the organization of standing." *Id.* at 379 n.20 (citation omitted); *accord DCCC v. Ziriax*, 487 F. Supp. 3d 1207, 1227 (N.D. Okla. 2020). Here, PBFA has adequately alleged organizational injury because it has shown that the Act caused PBFA to divert resources to combat the effects of the Act and that the Act frustrates PBFA's ability to accomplish its mission. *See* Doc. 122 at 4–7.

PBFA's mission is to "champion, strengthen, and elevate [its] members and the plant-based foods industry." Doc. 122-1 ¶ 3. PBFA's core activities in support of its mission include policy advocacy; marketplace research; creating voluntary labeling guidelines to help its member-companies comply with applicable laws; and fostering networks between members. *Id.* ¶¶ 3–4, 9–12. However, the passage of the Act has caused PBFA to divert resources—most often in the form of redirected personnel time—from its mission-driven work to combat the unconstitutional harms the Act is causing PBFA and its members. *See id.* ¶¶ 13–16; *see also* Doc. 122-2 (PBFA letter to Governor Stitt requesting he veto the Act). This is because the Act "frustrates PBFA's explicit goal of promoting clarity and consistency in the labeling of plant-based foods and ensuring" a nationwide labeling scheme that is "evenhandedly enforced." Doc. 122-1 ¶ 17. Because PBFA has diverted its resources and cannot accomplish its mission while the Act is in place, PBFA suffers organizational injury sufficient for standing.

III. Plaintiffs Have Sufficiently Alleged Traceability and Redressability.

A. Plaintiffs' have sufficiently alleged that their injury is fairly traceable to the Governor and the Commissioner of Agriculture.

To establish causation for Article III standing purposes, plaintiffs' injury must be

"fairly traceable to the challenged action of the defendant." *Bronson v. Swenson*, 500 F.3d 1099, 1109 (10th Cir. 2007) (quoting *Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005)). In a pre-enforcement challenge against the constitutionality of a statute, "the causation element of standing requires the named defendants to possess authority to enforce the complained-of provision." *Id.* at 1110. Plaintiffs have demonstrated that here and meet the requirements for traceability.

The Tenth Circuit has held that a Governor's responsibility to enforce the laws of the state is sufficient to demonstrate causation for Article III standing. *Petrella v. Brownback*, 697 F.3d 1285, 1293–94 (10th Cir. 2012) ("It cannot seriously be disputed that the proper vehicle for challenging the constitutionality of a state statute, where only prospective, non-monetary relief is sought, is an action against the state officials responsible for the enforcement of that statute.").

Additionally, the Governor is a proper party for causation purposes when challenging the conduct of executive branch officials. In *Bishop v. Oklahoma*, the court stated that the Governor's "generalized duty to enforce state law" was insufficient to establish traceability when a marriage license was denied by a member of the judiciary. Thus, "the executive branch of Oklahoma's government ha[d] no authority" over the alleged harm and "the alleged injury to the Couples could not be caused by any action of the Oklahoma officials, nor would an injunction [] against them give the Couples the legal status they seek." 333 F. App'x 361, 365 (10th Cir. 2009). In a subsequent case that also involved denial of a marriage license, the Tenth Circuit clarified that its "holding in *Bishop* turned on the conclusion that marriage licensing and recognition in Oklahoma were 'within the administration of the judiciary.'" *Kitchen v. Herbert*, 755 F.3d 1193, 1202 (10th Cir. 2014). In *Kitchen*, the Tenth Circuit held that because the license in

question was denied by a county clerk (an executive branch official), the Governor was the proper party for traceability purposes. *Kitchen*, 755 F.3d at 1202–04.

The present case is directly analogous to *Petrella*, in which plaintiffs named the Governor and the Commissioner of Education, among other state executive branch officials, in their constitutional challenge to a state law. 697 F.3d at 1293–94. Here, too, the injury is fairly traceable to the Governor and Commissioner of Agriculture. The enforcing agency, overseen by Commissioner Arthur, has stated it intends to enforce the Act against plant-based meat companies such as Plaintiffs, Yates Dep. 32:16-22, 33:8-13, directly causing their injury. The Commissioner, as President of the State Board of Agriculture, Okla. Stat., tit. 2 § 1-3(15), has the power to "[i]nitiate and prosecute administrative, civil, or criminal actions and proceedings necessary under the Oklahoma Agricultural Code." *Id.* §§ 2-4(A)(2)-(3). The Governor, vested with "the supreme executive power," Okla. Const. Sec. VI-2, has direct authority over the Commissioner and ODAFF as divisions of the executive branch. As such, Plaintiffs' injuries are directly traceable to the credible threat of enforcement by the Commissioner, the Governor, and officials in ODAFF under Defendants' authority. For the same reason, PBFA's organizational harm is fairly traceable to Defendants.

B. Plaintiffs' have sufficiently demonstrated that an injunction against Defendants would redress Plaintiffs' injuries.

To establish redressability for Article III standing purposes, an injunction against the defendant must "reduce[] to some extent" plaintiffs' injuries. *Edmondson*, 594 F.3d at 757. The requested injunction need not "relieve every injury." *Id.* (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 38 (1976)). Plaintiffs have demonstrated that here and meet the requirements for redressability.

Redressability exists when the defendant has the power to enforce the challenged statute, *see Bronson*, 500 F.3d at 1111, or has authority to direct the enforcing official. *See Hernandez*, 499 F. Supp. 3d at 1049 ("[A] favorable decision as to Governor Grisham likely would redress the Plaintiffs' injuries, because Governor Grisham has control over Secretary Stewart and, therefore, may direct whether and to what extent schools provide in-person education.") (citing *Petrella*, 697 F.3d at 1295). In these cases, an injunction against the defendant would reduce to some extent the injury of a plaintiff with a credible fear of enforcement under an allegedly unconstitutional statute.

In cases where the redressability requirement is not met, defendants have no power to enforce the challenged statute or over the allegedly harmful conduct. For example, there is no redressability if plaintiffs name an official in the wrong branch of government, *e.g.*, *Bronson*, 500 F.3d at 1112 (defendant was a county clerk and thus had no power over possible future criminal prosecutions); *Martinez v. Ritter*, No. 09-cv-02699-CMA-MEH, 2010 WL 2649951, at *3–4 (D. Colo. June 9, 2010) (defendants were members of the executive branch but harm had been caused by members of the judicial branch), or if plaintiffs name non-governmental agents. *E.g.*, *Coll v. First Am. Title Ins. Co.*, 642 F.3d 876, 892 (10th Cir. 2011) (defendant was insurance company and thus "any declaratory judgment entered against" the insurer would not "be binding on the State Defendants, who are the ones charged with enforcing the [challenged act]").

In this case, Plaintiffs have named the Governor and the Commissioner of Agriculture as Defendants. Doc. 59. The Governor, just as in *Hernandez*, has authority over executive agencies like ODAFF through direction of the Commissioner. The Commissioner directly oversees ODAFF, the agency tasked with enforcing the challenged Act. Yates Dep. 24:7-14, 34:20-35:21, 44:9–45:10, 57:9-19, 60:2-5, 80:21-

81:1; Defs.' Resp. Pls.' First Set Req. Admis. No. 3.[7] ODAFF has further stated that it is uncertain as to the penalties because it has yet to promulgate regulations under the Act, Yates Dep. at 30:22-31:9, 47:15-24, but that it plans to engage in rulemaking in the future. *See id.* at 45:22-24. While the specific penalties may be unclear, ODAFF will undoubtedly be the agency enforcing the law in question. *Id.* at 24:7-14, 34:20-35:21, 44:9–45:10, 57:9-19, 60:2-5; Defs.' Resp. Pls.' First Set Req. Admis. No. 3.

For these reasons, an injunction against Defendants would redress Plaintiffs' organizational and associational injuries. Therefore, Plaintiffs have sufficiently demonstrated redressability for the purposes of Article III standing.

IV. If the Court Finds the Act Does Not Apply to Plant-Based Meat Producers, Declaratory Relief is Appropriate.

Plaintiffs are seeking injunctive and declaratory relief. Doc. 59 at 5, 35. Courts "should declare the parties' rights and obligations when the judgment will (1) clarify or settle the legal relations in issue and (2) terminate or afford relief from the uncertainty giving rise to the proceeding." *Kunkel v. Cont'l Cas. Co.*, 866 F.2d 1269, 1275 (10th Cir. 1989). Declaratory relief would thus be appropriate here, as Defendants intend to enforce the Act against plant-based meat companies like Plaintiffs, so if the Court finds the Act does not apply to plant-based meat producers, a declaration would relieve some of the fear of prosecution that gave rise to this action.

CONCLUSION

Because they have adequately alleged standing, Plaintiffs respectfully request that the Court grant Plaintiffs' motion for summary judgment as to standing.

[7] The Act was specifically placed in Title 2 so that ODAFF would be the enforcing agency. *See* Doc. 174-1 (Rowlett Dep.) at 42:20-43:8.

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Respectfully submitted,

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