

Exhibit A

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**UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF CALIFORNIA**

THE STATE OF MISSOURI, ex rel., Chris
 Koster, Attorney General; THE STATE OF
 NEBRASKA, ex rel. Jon Bruning, Attorney
 General; THE STATE OF OKLAHOMA, ex
 rel. E. Scott Pruitt, Attorney General; THE
 STATE OF ALABAMA, ex rel. Luther
 Strange, Attorney General; THE
 COMMONWEALTH OF KENTUCKY, ex
 rel. Jack Conway, Attorney General; and
 TERRY E. BRANSTAD, Governor of the
 State of Iowa,

Plaintiffs,

v.

KAMALA D. HARRIS, solely in her official
 capacity as Attorney General of California;
 KAREN ROSS, solely in her official capacity
 as Secretary of the California Department of
 Food and Agriculture,

Defendants.

Case No. 2:14-cv-00341-KJM-KJN

**ANIMAL LEGAL DEFENSE FUND,
 COMPASSION OVER KILLING, INC.
 AND FARM SANCTUARY, INC.'S
 PROPOSED *AMICUS CURIAE* BRIEF IN
 SUPPORT OF DEFENDANTS' MOTION
 TO DISMISS**

Date: June 6, 2014
 Time: 10:00 a.m.
 Judge: Kimberly J. Mueller

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INTEREST OF AMICI CURIAE

1
2 Animal Legal Defense Fund, Compassion Over Killing, Inc. and Farm Sanctuary,
3 Inc. (together, “*Amici*”) respectfully submit this brief in support of the motion to dismiss filed by
4 Defendants Harris and Ross (“Harris MTD”) and the proposed motion to dismiss filed by the
5 Humane Society of the United States (“Humane Society MTD”). (Dkt. Nos. 27-2, 36.) *Amici*
6 are animal welfare organizations with a strong interest in AB 1437, which was passed in part to
7 promote animal welfare and which Plaintiffs The State of Missouri, The State of Nebraska, The
8 State of Oklahoma, The State of Alabama, The Commonwealth of Kentucky, and Terry E.
9 Branstad (together, “Plaintiffs”) are challenging in this case.

10 Protecting the welfare of animals is a part of the core mission of all three *Amici*.
11 That includes eliminating the cruelty associated with the use of battery cages in egg production,
12 an issue that all three organizations have spent considerable time, financial resources, and
13 institutional goodwill in addressing, as discussed more fully in *Amici*’s Motion for Leave to File
14 an *Amici* Brief, filed herewith. Therefore, each *Amicus* has a significant interest in the outcome
15 of this case. *Amici* submit this brief to provide the Court with additional authority and argument
16 regarding California’s legitimate interests in, and reasons for passing, AB 1437 that is not
17 contained in the briefs submitted by the parties or Intervenors to date, and therefore may assist
18 the Court in resolving the important issues raised by this case.

19 **INTRODUCTION AND SUMMARY OF ARGUMENT**

20 In 2008, California voters overwhelmingly passed the Prevention of Farm Animal
21 Cruelty Act, also known as Proposition 2 (“Prop 2”). Prop 2 provides, in relevant part, that “a
22 person shall not tether or confine any covered animal [including egg-laying hens], on a farm, for
23 all or the majority of any day, in a manner that prevents such animal from: (a) Lying down,
24 standing up, and fully extending his or her limbs; and (b) Turning around freely.” Cal. Health &
25 Safety Code § 25990(a)-(b). Two years later, the California Legislature enacted AB 1437, which
26 provides: “Commencing January 1, 2015, a shelled egg may not be sold or contracted for sale for
27 human consumption in California if it is the product of an egg-laying hen that was confined on a
28

1 farm or place that is not in compliance with animal care standards set forth in [§ 25990].” *Id.*
2 § 25996.

3 In passing AB 1437, the California Legislature had two main objectives:
4 preventing animal cruelty and protecting public health. (Dkt. No. 36, Harris MTD at 11.) The
5 law is based on legislative findings that, *inter alia*, “[e]gg-laying hens subjected to stress are
6 more likely to have higher levels of pathogens in their intestines,” while “food animals that are
7 treated well . . . are healthier and safer for human consumption.” Cal. Health & Safety Code
8 § 25995(a), (c). The stated purpose of AB 1437 is “to protect California consumers from the
9 deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from
10 egg-laying hens that are exposed to significant stress and may result in increased exposure to
11 disease pathogens including salmonella.” *Id.* § 25995(e).

12 Plaintiffs contend that AB 1437 violates the Commerce and Supremacy Clauses
13 of the U.S. Constitution. Those claims are meritless. *Amici* support the motions to dismiss
14 submitted by Defendants and by proposed Intervenor the Humane Society of the United States,
15 and agree with the arguments therein. This brief provides additional detail regarding two aspects
16 of Plaintiffs’ dormant Commerce Clause claim: (i) whether California’s claimed interests in
17 passing AB 1437 are legitimate, and (ii) whether those claimed interests were actually a pretext
18 masking a true intent to discriminate against out-of-state egg producers. As set forth below, AB
19 1437 even-handedly advances the State’s legitimate interests in preventing animal cruelty and
20 protecting public health. And not only does AB 1437 further legitimate State interests, but the
21 legislative history shows that those interests are, in fact, what motivated the California
22 Legislature to pass the bill.

23 ARGUMENT

24 **I. CALIFORNIA HAS A LEGITIMATE INTEREST IN AB 1437.**

25 AB 1437 is an even-handed statute that treats California and non-California
26 entities alike. *See* Harris MTD at 10-12; Humane Society MTD at 9-10; *Ass’n des Eleveurs de*
27 *Canards et d’Oies du Quebec v. Harris*, 729 F.3d 937, 948 (9th Cir. 2013) (“[A] statute that
28 ‘treat[s] all private companies exactly the same’ does not discriminate against interstate

1 commerce.” (quoting *United Haulers Ass’n, Inc. v. Oneida-Herkimer Solid Waste Mgmt. Auth.*,
 2 550 U.S. 330, 343 (2007)). The Supreme Court has held that “[w]here [a] statute regulates
 3 even-handedly to effectuate a legitimate local public interest, and its effects on interstate
 4 commerce are only incidental, it will be upheld unless the burden imposed on such commerce is
 5 clearly excessive in relation to the putative local benefits.” *Pike v. Bruce Church, Inc.*, 397 U.S.
 6 137, 142 (1970) (emphasis added).

7 Plaintiffs have failed to allege facts (as opposed to speculation) that, if true, would
 8 establish a significant burden on interstate commerce. (Harris MTD at 14-15; Humane Society
 9 MTD at 10-11.) But even if they had, their Commerce Clause claim would fail as a matter of
 10 law, because AB 1437 furthers important local interests: it promotes animal welfare and public
 11 health by ensuring that eggs consumed by California residents are produced in keeping with
 12 California’s standards. The Supreme Court has recognized that States have a legitimate interest
 13 in “protecting the public health and preventing cruelty to animals.” *Church of the Lukumi*
 14 *Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 538 (1993); accord *Hughes v. Oklahoma*, 441
 15 U.S. 322, 337 (1979) (“We consider the States’ interests in conservation and protection of wild
 16 animals as legitimate local purposes similar to the States’ interests in protecting the health and
 17 safety of their citizens.”). Each of those interests outweighs any alleged burden on interstate
 18 commerce. Because plaintiffs cannot allege that the burden on interstate commerce is “clearly
 19 excessive” relative to AB 1437’s benefits, the Court should dismiss Plaintiffs’ Commerce Clause
 20 claim with prejudice. See *Pike*, 397 U.S. at 142.

21 **A. Prevention of Animal Cruelty Is a Legitimate State Interest.**

22 Prohibitions on animal cruelty have a long tradition in American law. Such laws
 23 first appeared in this country during the colonial period. See *The Body of Liberties* § 92 (Mass.
 24 Bay Colony 1641), reprinted in *American Historical Documents 1000–1904*, 43 Harvard
 25 Classics 66, 79 (C. Eliot ed. 1910) (“No man shall exercise any Tirranny or Crueltie towards any
 26 brute Creature which are usuallie kept for man’s use”). By 1913, every State had a law banning
 27 animal cruelty. See Emily Stewart Leavitt & Diane Halverson, *The Evolution of Anti-Cruelty*
 28 *Laws in the United States*, in *ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN*

1 LAWS FROM 1641 TO 1990, at 4 (1990). These laws reflect a deep-seated revulsion against
2 specific practices in which animals suffer abuse and a “public policy . . . to avoid unnecessary
3 cruelty to animals.” *Humane Soc’y v. Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986).

4 Anti-cruelty laws aim to protect animals, but also reflect an interest in public
5 morality. *See Waters v. People*, 46 P. 112, 113 (Colo. 1896) (“[The anti-cruelty law’s] aim is
6 not only to protect these animals, but to conserve public morals . . .”). As Justice Scalia noted
7 in *Barnes v. Glen Theatre, Inc.*, “[o]ur society prohibits, and all human societies have prohibited,
8 certain activities not because they harm others but because they are considered, in the traditional
9 phrase, ‘*contra bonos mores*,’ *i.e.*, immoral . . . for example . . . cockfighting.” 501 U.S. 560,
10 575 (1991) (Scalia, J., concurring in the judgment). Courts and legislatures have long recognized
11 that “[c]ruelty to [animals] manifests a vicious and degraded nature, and it tends inevitably to
12 cruelty to men.” *Stephens v. State*, 3 So. 458, 459 (Miss. 1888); *see also Johnson v. District of*
13 *Columbia*, 30 App. D.C. 520, 522 (D.C. 1908) (preventing animal cruelty “is in the interest of
14 peace and order and conduces to the morals and general welfare of the community”).

15 Reflecting these long-standing principles, it is well-settled that States have a
16 legitimate interest in the protection of animals. *See Lukumi*, 508 U.S. at 538; *accord Cavel Int’l,*
17 *Inc. v. Madigan*, 500 F.3d 551, 557 (7th Cir. 2007) (“States have a legitimate interest in
18 prolonging the lives of animals that their population happens to like They can ban bullfights
19 and cockfights and the abuse and neglect of animals.”). In *Pacific Northwest Venison Producers*
20 *v. Smitch*, venison producers challenged Washington’s ban on the private ownership and
21 exchange of several species of wildlife. 20 F.3d 1008, 1010 (9th Cir. 1994), *cert. denied*, 513
22 U.S. 918 (1994). The Ninth Circuit explained that the State’s interest in protecting wildlife “is
23 one of the state’s most important interests” and that “[r]egulations promulgated pursuant to [that
24 interest] carry a strong presumption of validity.” *Id.* at 1013-14. Because the venison producers
25 failed to show that the burden on interstate commerce was “so great that [it] outweigh[ed] this
26 vital state interest,” the court rejected their claim. *Id.* at 1015. The district court in *Chinatown*
27 *Neighborhood Association v. Harris* similarly emphasized the State’s strong interest in animal
28 protection in rejecting a Commerce Clause claim. 2014 WL 1245047, at *9 (N.D. Cal. Mar. 25,

1 2014). In that case, various Asian American groups challenged California’s ban on the
2 possession and sale of shark fins. *Id.* at *1. The court found that California had a legitimate
3 interest in protecting public health and wildlife, and held that the ban did not violate the
4 Commerce Clause because the plaintiffs failed to rebut the “strong presumption” that regulations
5 aimed at preserving wildlife are valid. *Id.* at *9.

6 Importantly, the State interest in protecting animals is not limited to in-state
7 behavior that affects animals located within the State—it extends equally to in-state behavior that
8 affects out-of-state animals. For example, in *Association des Eleveurs*, plaintiffs argued that
9 California’s ban on the sale of products produced by force-feeding birds did not prevent animal
10 cruelty in California because California already prohibited the act of force-feeding birds. 729
11 F.3d at 952. The Ninth Circuit rejected that argument, reasoning that the ban “may discourage
12 the consumption of products produced by force feeding birds and prevent complicity in a
13 practice that is deemed cruel to animals.” *Id.*; see also *Chinatown Neighborhood Ass’n*, 2014
14 WL 1245047, at *9 (finding that California has a legitimate interest in regulating in-state
15 consumption of shark fins that came from sharks killed outside of California). Like the laws at
16 issue in *Smitch*, *Chinatown Neighborhood Association*, and *Association des Eleveurs*, AB 1437
17 furthers the State’s interest in protecting animals and in avoiding complicity in practices that it
18 deems cruel. It is, therefore, entitled to a “strong presumption of validity” because protecting
19 animals is “one of the state’s most important interests.” *Smitch*, 20 F.3d at 1013-14.

20 **B. Protection of Public Health Is a Legitimate State Interest.**

21 In addition to preventing animal cruelty, States have broad authority to enact laws
22 to protect public health. See *Great Atl. & Pac. Tea Co., Inc. v. Cottrell*, 424 U.S. 366, 371
23 (1976) (“[U]nder our constitutional scheme the States retain ‘broad power’ to legislate protection
24 for their citizens in matters of local concern such as public health, and . . . not every exercise of
25 local power is invalid merely because it affects in some way the flow of commerce between the
26 States.”); *Barsky v. Bd. of Regents of Univ.*, 347 U.S. 442, 449-50 (1954) (“It is elemental that a
27 state has broad power to establish and enforce standards of conduct within its borders relative to
28 the health of everyone. It is a vital part of a state’s police power.”); *Olszewski v. Scripps Health*,

1 30 Cal. 4th 798, 815 (2003) (“The regulation of public health and the cost of medical care are
2 virtual paradigms of matters traditionally within the police powers of the state.”); *Lewis Food*
3 *Co. v. State Dep’t of Pub. Health*, 110 Cal. App. 2d 759, 762 (1952) (“To conserve and protect
4 the health of its citizens is a paramount duty of the state, and a fair and reasonable exercise of the
5 sovereign power.”).

6 Courts have frequently upheld state laws aimed at protecting public health and
7 safety, even when they impose a burden on interstate commerce. *See, e.g., Clason v. State of*
8 *Indiana*, 306 U.S. 439, 443 (1939) (“The power of the state to prescribe regulations which shall
9 prevent the production within its borders of impure foods . . . is well established. . . . Nor does it
10 make any difference that such regulations incidentally affect interstate commerce, when the
11 object of the regulation is not to that end, but is a legitimate attempt to protect the people of the
12 state.”); *Chinatown Neighborhood Ass’n*, 2014 WL 1245047, at *8 (“The Supreme Court has
13 even recognized states’ ‘right to impose even burdensome regulations in the interest of local
14 health and safety.’” (quoting *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 535 (1949)));
15 *Waste Mgmt. of Alameda Cnty., Inc. v. Biagini Waste Reduction Sys., Inc.*, 63 Cal. App. 4th
16 1488, 1498 (1998) (“When a state statute regarding safety matters applies equally to interstate
17 and intrastate commerce, the courts are generally reluctant to invalidate [it] even if [it] may have
18 some impact on interstate commerce.”).

19 Indeed, in *Maine v. Taylor*, the Supreme Court held that the States’ interest in
20 protecting public health was so compelling that it justified a state law that facially discriminated
21 against interstate commerce. 477 U.S. 131, 151-52 (1986). In that case, Robert Taylor
22 challenged a Maine statute that prohibited the importation of live baitfish. *Id.* at 132-33. Maine
23 argued that the ban was necessary to “protect[] the State’s fisheries from parasites and nonnative
24 species that might be included in shipments of live baitfish.” *Id.* at 133. The Supreme Court
25 upheld the ban even though it “discriminate[d] on its face against interstate trade.” *Id.* at 138.
26 The Court explained, “[e]ven overt discrimination against interstate trade may be justified where,
27 as in this case, out-of-state goods or services are particularly likely for some reason to threaten
28 the health and safety of a State’s citizens or the integrity of its natural resources.” *Id.* at 148

1 n.19. Therefore, the Constitution permits States to enact law “to protect the health . . . of its
 2 citizens,” especially where, as here, the law does not discriminate against interstate commerce.
 3 *See id.* at 151.

4 **C. AB 1437 Furthers These Substantial State Interests.**

5 AB 1437 advances California’s legitimate and substantial interests in animal
 6 welfare and public health. *First*, it advances the State’s interest in preventing animal cruelty, by
 7 “cleansing [the State] market[] of commerce which the Legislature finds to be unethical.”
 8 *Cresenzi Bird Importers, Inc. v. State of New York*, 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987).
 9 Plaintiffs’ allegation that AB 1437 serves no legitimate State interest because it does not “protect
 10 the welfare of any animals within the State of California” misses the point. (Dkt. No. 13, Pls.’
 11 First Amended Compl. (“FAC”) ¶ 100). In passing AB 1437, the California Legislature
 12 determined that California should not support the production of eggs using battery cages,
 13 whether the eggs are produced in California or elsewhere.¹ California’s interest in preventing
 14 California consumers from being “complicit[] in a practice that [the State] deemed cruel to
 15 animals” is a legitimate one under settled law. *Ass’n des Eleveurs*, 729 F.3d at 952; *see also*
 16 *Cresenzi*, 658 F. Supp. at 1447 (“The states’ authority to establish local prohibitions with respect
 17 to out-of-state wildlife has, since the late nineteenth-century, been recognized by the courts.”).

18 Plaintiffs’ assertion that California lacks the ability to regulate the in-state sale of
 19 products that are produced unethically (in the view of California) outside the State runs directly
 20 contrary to this settled authority, and has troubling implications beyond the animal welfare
 21 context. For example, under Plaintiffs’ reasoning, a law banning the sale in California of child
 22

23 ¹ It is not the role of this Court to second-guess the Legislature’s judgment regarding
 24 whether the confinement of egg-laying hens in battery cages is cruel, or whether it is
 25 ethical for merchants to sell eggs produced by hens kept in such conditions. *See W. & S.*
 26 *Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 670 (1981) (“[T]he
 27 courts are not empowered to second-guess the wisdom of state policies. Our review is
 28 confined to the *legitimacy* of the purpose.”); *Viva! Int’l Voice for Animals v. Adidas*
Promotional Retail Operations, Inc., 41 Cal. 4th 929, 934 (2007) (“It is not our role to
 judge the wisdom of Australia’s wildlife management practices . . . nor the wisdom of
 California’s wildlife rules or the federal government’s statutes or regulations.”).
 California is free to decide for itself, as it did in passing AB 1437, what constitutes
 animal cruelty and to pass laws ensuring that in-state consumers do not subsidize it.

1 pornography produced outside of California would be constitutionally suspect, as it would
2 impose a burden on out-of-state pornographers to satisfy California’s ethical judgment. But
3 State regulation of child pornography is unquestionably constitutional. *See New York v. Ferber*,
4 458 U.S. 747, 766 n.19 (1982) (“States have not limited their distribution laws to material
5 produced within their own borders because the maintenance of the market ‘itself leaves open the
6 financial conduit by which the production of such material is funded and materially increases the
7 risk that [local] children will be injured.’”). Plaintiffs’ reasoning would extend the dormant
8 Commerce Clause far beyond any reasonable bound.

9 *Second*, AB 1437 advances the State’s interest in protecting public health by
10 requiring that all eggs sold in California come from hens that “are treated well and provided with
11 at least minimum accommodation of their natural behaviors and physical needs.” *See Cal.*
12 *Health & Safety Code § 25995(a)* (citing a Pew Commission study finding that such eggs are
13 “healthier and safer for human consumption”). Without AB 1437, California merchants could
14 sell eggs produced by hens confined in battery cages, and the California Legislature determined
15 that those eggs are more likely to carry “disease pathogens including salmonella.” *Id.*
16 *§ 25995(e)*. States routinely and legitimately pass laws that prohibit the sale of goods that may
17 injure the public health.

18 Again, it is not for this Court to second-guess whether the California Legislature’s
19 findings are correct or supported by empirical evidence. In *Minnesota v. Clover Leaf Creamery*,
20 milk sellers challenged the constitutionality of a Minnesota statute banning the retail sale of milk
21 in plastic containers, but permitting such sale in paperboard milk cartons. 449 U.S. 456, 458
22 (1981). The milk sellers argued that there was no “empirical connection” between a ban on
23 plastic containers and the State’s articulated interest in protecting the environment, and produced
24 evidence that the ban would, in fact, be environmentally harmful. *Id.* at 463-64. Rejecting that
25 argument, the Supreme Court explained that “States are not required to convince the courts of the
26 correctness of their legislative judgments.” *Id.* at 464. Rather, “those challenging the legislative
27 judgment must convince the court that the legislative facts on which the classification is
28 apparently based could not reasonably be conceived to be true by the governmental

1 decisionmaker.” *Id.* (quoting *Vance v. Bradley*, 440 U.S. 93, 111 (1979)). So too here.
2 California need not show that AB 1437, in fact, will reduce incidents of Salmonella. *See id.*
3 There is no allegation that the legislative findings “could not reasonably be conceived to be
4 true,” and therefore they must be accepted by this Court for purposes of determining the strength
5 of the State interest at stake. *Id.*

6 **II. AB 1437 WAS NOT MOTIVATED BY AN IMPROPER PURPOSE.**

7 Plaintiffs allege that the stated purpose of AB 1437 was pretextual, and the real
8 purpose was to benefit in-state businesses at the expense of out-of-state businesses. (FAC ¶¶ 68-
9 81.) “The party challenging a regulation bears the burden of establishing that a challenged
10 statute has a discriminatory purpose or effect under the Commerce Clause.” *Rocky Mountain*
11 *Farmers Union v. Corey*, 730 F.3d 1070, 1097 (9th Cir. 2013). Here, the FAC does not plead
12 facts that even begin to meet this burden—Plaintiffs’ accusations of protectionism are fantasy.

13 As an initial matter, Plaintiffs’ allegation that the Legislature had a discriminatory
14 purpose makes no sense because the law unquestionably regulates only the sale of goods in
15 California, and does not give California businesses an advantage over their out-of-state
16 competitors. Plaintiffs’ claim that a law that treats everyone the same is discriminatory or
17 “protectionist” (FAC ¶ 82) turns the dormant Commerce Clause on its head.

18 Even passing this fundamental problem, the FAC fails to sufficiently allege that
19 AB 1437 was passed for a discriminatory purpose. According to the legislation itself, the
20 purpose of AB 1437 is “to protect California consumers from the deleterious, health, safety, and
21 welfare effects of the sale and consumption of eggs derived from egg-laying hens that are
22 exposed to significant stress and may result in increased exposure to disease pathogens including
23 salmonella.” Cal. Health & Safety Code § 25995(e). In determining whether a statute has a
24 discriminatory purpose, the Court must “assume that the objectives articulated by the legislature
25 are actual purposes of the statute, unless an examination of the circumstances forces [it] to
26 conclude that they could not have been a goal of the legislature.” *Rocky Mountain*, 730 F.3d at
27 1097 (quoting *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981)). This
28 high burden is seldom met, and here Plaintiffs’ factual allegations, even accepting them as true,

1 do not come close to meeting it. In fact, the legislative history demonstrates that the stated
2 purpose of protecting animal welfare and public health was the Legislature’s *actual* purpose.

3 *First*, plaintiffs argue that AB 1437’s public health purpose must be pretextual
4 because “no scientific study conducted to date has found any correlation between cage size or
5 stocking density and the incidence of Salmonella in egg-laying hens.” (FAC ¶ 69.) Even if that
6 were true, whether the legislature’s findings are supported by scientific evidence is irrelevant.
7 *See Clover Leaf Creamery*, 449 U.S. at 463-64. Plaintiffs do not allege that the California
8 Legislature’s findings “could not reasonably be conceived to be true.” *Id.* at 464. In fact,
9 Plaintiffs’ allegations about the lack of empirical evidence of a connection between Salmonella
10 and stocking density are strikingly weak. (FAC ¶ 69 & Exs. I, J.) Plaintiffs cite only one article,
11 which addresses stress in hens but does not even mention Salmonella. (FAC, Ex. J.) And
12 Plaintiffs quote a book which states that “[b]ased on the few studies exploring the stress response
13 of hens housed in different housing systems, no consistent conclusion on the influence of the
14 housing system can be drawn.” (FAC, Ex. I.) Plaintiffs badly mischaracterize this quote. Two
15 pages earlier—on a page which Plaintiffs omit from the passage they submitted to this Court—
16 the book states that “the majority of the studies indicate that housing of laying hens in
17 conventional battery cages significantly increases the risk of detecting Salmonella compared to
18 housing in non-cage systems.” (RJN, Ex. 2 at 110.) Thus, Plaintiffs’ allegation is directly
19 rebutted by Plaintiffs’ own source.

20 *Second*, Plaintiffs rely on an analysis by the California Assembly Committee on
21 Appropriations to argue that AB 1437’s “true purpose” was “to protect California farmers from
22 the market effects of Prop 2 by ‘leveling the playing field.’” (FAC ¶ 70 & Ex. M.) The FAC
23 quotes a portion of the “Rationale” section of the analysis, but ignores the portion that
24 immediately follows, which states:

25 Californians have a history of establishing basic animal welfare
26 standards for the products they consume. In 1996, California
27 voters banned the consumption, sale and transport of horse meat.
28 In 2004, the California Legislature banned the sale of foie gras by
prohibiting the sale of a product that is the result of force feeding a
bird.

1 (FAC Ex. M at 1.) This passage makes clear, to the extent this analysis reveals the Legislature’s
2 purpose, that purpose was at least in large part to promote animal welfare.

3 Moreover, one committee analysis is insufficient to plead that the stated purpose
4 of AB 1437 is a pretext. In *Clover Leaf Creamery*, the milk sellers presented evidence that
5 several legislators sought to obtain votes for the law by recounting “the evils of the out-of-state
6 plastics industry and the need to protect Minnesota businesses.” See Brief for Respondents at 30,
7 *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (No. 79-1171), 1980 WL 339367
8 at *30. The Supreme Court found such evidence insufficient, explaining, “We will not invalidate
9 a state statute . . . merely because some legislators sought to obtain votes for the measure on the
10 basis of its beneficial side effects on state industry.” *Clover Leaf Creamery*, 449 U.S. at 463 n.7;
11 *In re Kelly*, 841 F.3d 908, 912 n.3 (9th Cir. 1988) (“Stray comments by individual legislators, not
12 otherwise supported by statutory language or committee reports, cannot be attributed to the full
13 body that voted on the bill.”). It follows, *a fortiori*, that one analysis, prepared by one person on
14 a committee staff, is insufficient. There is no allegation that this analysis was even considered
15 by any legislator, much less that it accurately states the will of the Legislature in its entirety.
16 Therefore, it does not come close to demonstrating that animal welfare and public health “could
17 not have been a goal” of AB 1437. See *Rocky Mountain*, 730 F.3d at 1098.

18 Third, Plaintiffs omit mention of a different legislative analysis that further
19 undermines their allegations. (Senate Rules Committee, Third Reading, Bill Analysis (Request
20 for Judicial Notice (“RJN”), Ex. 1.) On May 26, 2010, the day that the bill passed the Senate,
21 the Office of Senate Floor Analyses released a bill analysis stating that AB 1437 is designed to
22 protect public health and welfare: “According to the author’s office, requiring all eggs sold for
23 human consumption in California to conform to the animal care standards will protect
24 California’s consumer’s health and welfare. Reports cited by the author state that egg-laying
25 hens subjected to stress have a greater chance of carrying bacteria or viruses, thus having a
26 greater chance of exposing consumers to food borne bacteria and viruses.” (RJN Ex. 1.) The
27 analysis also explained that the bill would “ensure that all eggs consumed in California are
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1 produced by hens raised according to animal welfare standards that meet the expectations for
2 animal care and food safety of the California consumer.” *Id.*

3 *Fourth*, plaintiffs allege that the California Health & Human Services Agency
4 (“CHHSA”) and the Department of Food and Agriculture (“CFDA”) prepared Enrolled Bill
5 Reports (“Reports”) for Governor Arnold Schwarzenegger stating that there is “[n]o scientific
6 evidence” to support the assertion that AB 1437 will prevent Salmonella, and “it will . . . be hard
7 to ascribe any particular health risk for failure to comply [with AB 1437].” (FAC ¶¶ 71, 72.)
8 Plaintiffs also allege that the CFDA Report urged the Governor to sign AB 1437 to ensure “a
9 level playing field for California’s shell egg producers” because “[w]ithout a level playing field
10 . . . companies in California will no longer be able to operate in this state and will either go out of
11 business or be forced to relocated to another state.” (*Id.* ¶ 73-74.)

12 Statements made by state administrative agencies *after* the California Assembly
13 and Senate had already passed AB 1437 “constitute weak evidence of legislative intent.” *See*
14 *Maine v. Taylor*, 477 U.S. at 150. Moreover, even assuming the Reports are relevant, they do
15 not support plaintiffs’ claim. The CHHSA Report expressly states that the purpose of AB 1437
16 is to protect public health. *See* FAC, Ex. K at 1 (“The purpose of the bill is to protect California
17 consumers from increased exposure to disease pathogens, including salmonella, by improving
18 living conditions and overall health of egg-laying hens.”). Although the Report states that there
19 is no “scientific evidence” to support these public health benefits, it also notes that “[s]ome
20 informal reports claim that food animals, such as egg-laying hens, are healthier and safer for
21 human consumption if the animals are provided with at least a minimum accommodation of their
22 natural behaviors and physical needs.” *Id.* As shown by the legislative findings incorporated
23 into the bill, Cal. Health & Safety Code § 25995, regardless of what this particular staffer
24 thought of the evidence, California’s elected legislators accepted the evidence of a connection
25 between Salmonella and housing for egg-laying hens.

26 The CFDA Report states that the purpose of AB 1437 is to “prohibit the sale of
27 shell eggs for human consumption if it is the product of an egg-laying hen that was caged or
28 confined on a farm or place that is not in compliance with animal care standards.” (FAC, Ex. L

1 at 1.) It also states that AB 1437 will “ensure a level playing field,” but it does so in the context
 2 of analyzing the bill’s fiscal and economic impact. (*Id.* at 3.) The fact that a state agency
 3 advised the Governor of AB 1437’s “beneficial side effects on state industry” does not convert it
 4 into protectionist legislation. *See Clover Leaf Creamery*, 449 U.S. at 463 n.7. Further, the
 5 Report states that one of the “cons” of AB 1437 is that it “could limit the volume of shell eggs
 6 imported for consumption.” (FAC, Ex. L at 8.) Far from being motivated by protectionism, the
 7 CFDA believed that the risk of a decrease in out-of-state imports was a *disadvantage* that the
 8 Governor ought to consider.

9 *Finally*, plaintiffs contend that the Governor’s signing statement shows that AB
 10 1437’s purpose is not to protect public health, but rather to protect California farmers. It does
 11 not. In his signing statement, the Governor stated: “The voters’ overwhelming approval of
 12 Proposition 2 demonstrated their strong support for the humane treatment of egg producing hens
 13 in California. By ensuring that all eggs in California meet the requirements of Proposition 2, this
 14 bill is good for both California egg producers *and animal welfare*.” (FAC ¶ 75 & Ex. N
 15 (emphasis added).) Assuming that the Governor’s statement² is evidence of *legislative* intent,
 16 the statement shows that the Governor was motivated by concerns about animal welfare.
 17 Therefore, it fails to show that public health and animal welfare “could not have been a goal” of
 18 AB 1437. *See Clover Leaf Creamery Co.*, 449 U.S. at 463 n.7.

19 In short, even drawing all inferences in favor of Plaintiffs, the legislative history
 20 is consistent with the stated purposes of AB 1437 and Plaintiffs fall far short of pleading a
 21 discriminatory purpose.

22
 23
 24 ² Because using *executive* statements to determine *legislative* intent raises separation of
 25 powers concerns, courts routinely question the use of such statements. *See United States*
 26 *v. Story*, 891 F.2d 988, 994 (2d Cir. 1989) (“[T]here is room for doubt as to the weight to
 27 be accorded a presidential signing statement in illuminating congressional intent.”);
 28 *Yakima Valley Mem’l Hosp. v. Wash. State Dep’t of Health*, 654 F.3d 919, 934 (9th Cir.
 2011) (doubting that “a presidential signing statement could establish an unmistakably
 clear *legislative* intent”); *Hovila v. Tween Brands, Inc.*, No. C09-0491RSL, 2010 WL
 1433417 at *10 n.4 (W.D. Wash. April 7, 2010) (“Allowing the President to determine
 what a law means when adding his signature to a completed piece of legislation imperils
 the constitutionally-mandated roles of both Congress and the judiciary.”).

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CONCLUSION

For all the foregoing reasons, *Amici* respectfully submit that Plaintiffs' First Amended Complaint should be dismissed.

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Respectfully submitted,

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