No. 14-17111

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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-Appellants,

vs.

KAMALA D. HARRIS, Attorney General of California; and
KAREN ROSS, Secretary of the California Department of Food and Agriculture,
Defendants-Appellees,

and

THE HUMANE SOCIETY OF THE UNITED STATES and
THE ASSOCIATION OF CALIFORNIA EGG FARMERS,
Defendants-Intervenors-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA, CASE NO. 2:14-CV-00341-KJM-KJN
HON. KIMBERLY J. MUELLER, DISTRICT JUDGE

AMICUS CURIAE BRIEF IN SUPPORT OF APPELLEES AND IN SUPPORT OF AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT
(Fed. R. App. P. 26.1, 29(c))

Animal Legal Defense Fund, Compassion Over Killing, Inc. and Farm Sanctuary, Inc. (together, "*Amici*") certify that none of the *Amici* has a parent company and no publicly held corporation holds more that 10% of the stock of any of the *Amici*.

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STATEMENT OF *AMICI CURIAE*

(Fed. R. App. P. 29(c)(3))

Animal Legal Defense Fund, Compassion Over Killing, Inc., and Farm Sanctuary, Inc. (together, "*Amici*") respectfully submit this brief in support of Appellees and in support of affirmance. *Amici* are animal welfare organizations with a strong interest in AB 1437, which was passed in part to promote animal welfare and which Plaintiffs and Appellants The State of Missouri, The State of Nebraska, The State of Oklahoma, The State of Alabama, The Commonwealth of Kentucky, and the Honorable Governor of Iowa Terry E. Branstad (together, "Appellants") are challenging in this action.

Protecting the welfare of animals is a part of the core mission of all three *Amici*. That includes eliminating the cruelty associated with the use of battery cages in egg production, an issue that all three organizations have spent considerable time, financial resources, and institutional goodwill in addressing. Therefore, each *amicus* has a significant interest in the outcome of this case.[1]

INTRODUCTION

Amici submit this brief to address two issues. *First*, Appellants argue that they have *parens patriae* standing in part because the effect of AB 1437 is to

[1] Counsel for *Amici* authored this brief in whole. No party or counsel for any party, or any other person other than *Amici* and their counsel, contributed money to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

"exclude [Appellants' citizens] from the benefits that flow from [their] participation in the federal system." (Appellants' Br. at 18.) But this position is contrary to a basic tenet of the federal system—that a state has the authority to pass laws which regulate behavior within the state and which protect its citizens and uphold the ethical judgments of its electorate. California does not deny other states "their rightful place as co-equal sovereigns in our federal system" (*id.* at 44) by requiring that products sold in California—whether produced in California or not—comply with California's health, safety and animal welfare standards. On the contrary, a long line of authority, from this Court and others, establishes that states have legitimate interests in public health and animal welfare and have broad power to regulate in those areas. It is Appellants who would upset this well-established aspect of the federal system, by seeking, on behalf of a handful of their citizens, to hobble California's power to pass laws protecting its own citizens, even when those laws are—like AB 1437—facially neutral and non-discriminatory.

Second, *Amici* write to correct Appellants' recitation of the legislative history of AB 1437. In their Statement of the Case, Appellants rely on highly selective portions of the legislative history to assert that "the bill's true purpose was not to protect public health but rather to protect California's egg farmers from the market effects of Prop 2 by 'leveling the playing field' for out-of-state egg producers." (Appellants' Br. at 10.) That is inaccurate—as a fair reading of the

legislative history confirms, the bill's "true purpose" was exactly what the Legislature said it was: to protect public health and prevent animal cruelty.

ARGUMENT

I. CALIFORNIA HAS LEGITIMATE AND SUBSTANTIAL INTERESTS IN PROTECTING THE PUBLIC HEALTH AND PREVENTING CRUELTY TO ANIMALS.

Appellants' argument that AB 1437 denies them "the benefits that flow from [their] participation in the federal system" has it backwards. (Appellants' Br. at 18.) AB 1437 is an even-handed statute that treats California and non-California entities the same, and "a statute that 'treat[s] all private companies exactly the same' does not discriminate against interstate commerce." *Ass'n des Eleveurs de Canards et d'Oies du Quebec* v. *Harris*, 729 F.3d 937, 948 (9th Cir. 2013) (quoting *United Haulers Ass'n, Inc.* v. *Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 343 (2007)). Appellants, on the other hand, *are* seeking to upset the federal system, by asserting the right to challenge California's ability to regulate in two areas of legitimate and important State interest—"protecting the public health and preventing cruelty to animals." *Church of the Lukumi Babalu Aye, Inc.* v. *City of Hialeah*, 508 U.S. 520, 538 (1993).

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

Prohibitions on animal cruelty have a long tradition in American law. Such laws first appeared in this country during the colonial period. *See* The Body of Liberties § 92 (Mass. Bay Colony 1641), reprinted in American Historical

Documents 1000–1904, 43 Harvard Classics 66, 79 (C. Eliot ed. 1910) ("No man shall exercise any Tirranny or Crueltie towards any bruite Creature which are usuallie kept for man's use"). By 1913, every State had a law banning animal cruelty. *See* Emily Stewart Leavitt & Diane Halverson, *The Evolution of Anti-Cruelty Laws in the United States*, *in* ANIMALS AND THEIR LEGAL RIGHTS: A SURVEY OF AMERICAN LAWS FROM 1641 TO 1990, at 4 (1990). These laws reflect a deep-seated revulsion against specific practices in which animals suffer abuse and a "public policy . . . to avoid unnecessary cruelty to animals." *Humane Society* v. *Lyng*, 633 F. Supp. 480, 486 (W.D.N.Y. 1986).

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

(D.C. 1908) (preventing animal cruelty "is in the interest of peace and order and conduces to the morals and general welfare of the community").

Reflecting these long-standing principles, it is well-settled that States have a legitimate interest in the protection of animals. *See Lukumi*, 508 U.S. at 538; *accord Cavel Int'l, Inc.* v. *Madigan*, 500 F.3d 551, 557 (7th Cir. 2007) ("States have a legitimate interest in prolonging the lives of animals that their population happens to like . . . . They can ban bullfights and cockfights and the abuse and neglect of animals."); *Hughes* v. *Oklahoma*, 441 U.S. 322, 337 (1979) ("We consider the States' interests in conservation and protection of wild animals as legitimate local purposes similar to the States' interests in protecting the health and safety of their citizens."). In *Pacific Northwest Venison Producers* v. *Smitch*, for example, venison producers challenged Washington's ban on the private ownership and exchange of several species of wildlife. 20 F.3d 1008, 1010 (9th Cir. 1994), *cert. denied*, 513 U.S. 918 (1994). The Ninth Circuit explained that the State's interest in protecting wildlife "is one of the state's most important interests" and that "[r]egulations promulgated pursuant to [that interest] carry a strong presumption of validity." *Id.* at 1013-14.

Importantly, the state interest in protecting animals is not limited to in-state behavior that affects animals located within the State—it extends equally to in-state behavior that affects out-of-state animals. In *Association des Eleveurs*,

plaintiffs argued that California's ban on the sale of products produced by force-feeding birds did not prevent animal cruelty in California because California already prohibited the act of force-feeding birds. 729 F.3d at 952. This Court rejected that argument, reasoning that the ban "may discourage the consumption of products produced by force feeding birds and prevent complicity in a practice that is deemed cruel to animals."[2] *Id.*; *see also Chinatown Neighborhood Ass'n* v. *Harris*, 33 F. Supp. 3d 1085, 1101 (N.D. Cal. 2014) (finding that California has a legitimate interest in regulating in-state consumption of shark fins that came from sharks killed outside of California).

Appellants' suggestion that California lacks the ability to regulate the in-state sale of products that are produced outside the State has troubling implications beyond the animal welfare context. California has imposed myriad regulations restricting the sale of products—because the products are dangerous or for a variety of other reasons—regardless of where such products are made. As just a few examples, California regulates the sale of adulterated food, Cal. Penal Code § 383, the sale of aerosol paint containers to minors, Cal. Penal Code. § 594.1, the sale of refrigerators and freezers without integral locks, Cal. Penal Code § 402c, the sale of prisoner-manufactured articles, Cal. Penal Code § 2812,

[2] Following remand, the District Court in *Association des Eleveurs* enjoined enforcement of the law at issue on preemption grounds. *See* No. 2:12-cv-5735-SVW-RZ, 2015 WL 191375 (C.D. Cal. Jan. 7, 2015).

and the sale of balloons constructed of electrically conductive material, Cal. Penal Code § 653.1. Under Appellants' reasoning, these laws, which regulate the in-state sale of products produced outside of California, would be Constitutionally suspect, as they would impose a burden on out-of-state producers to satisfy California's legislative judgments. Appellants' reasoning would hamstring California's ability to legislate and would extend the dormant Commerce Clause far beyond any reasonable bound.

Like the laws at issue in *Smitch*, *Chinatown Neighborhood Association*, and *Association des Eleveurs*, AB 1437 furthers the State's interest in protecting animals and in avoiding complicity in practices that it deems cruel, by "cleansing [the State] market[] of commerce which the Legislature finds to be unethical." *Cresenzi Bird Importers, Inc.* v. *State of New York*, 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987). In passing AB 1437, the California Legislature determined that California should not support the production of eggs using battery cages, whether the eggs are produced in California or elsewhere.[3] That "billions of eggs

[3] It is not the role of this Court to second-guess the Legislature's judgment regarding whether the confinement of egg-laying hens in battery cages is cruel, or whether it is ethical for merchants to sell eggs produced by hens kept in such conditions. *See W. & S. Life Ins. Co.* v. *State Bd. of Equalization of California*, 451 U.S. 648, 670 (1981) ("[T]he courts are not empowered to second-guess the wisdom of state policies. Our review is 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

per year" are imported into California, as Appellants claim (Appellants' Br. at 31), only underscores the strength of California's interest in preventing California consumers from being "complicit[] in a practice that [the State] deemed cruel to animals." *Ass'n des Eleveurs*, 729 F.3d at 952.

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

In addition to preventing animal cruelty, States have broad and well-established authority to enact laws to protect public health. *See, e.g., Great Atl. & Pac. Tea Co., Inc.* v. *Cottrell*, 424 U.S. 366, 371 (1976) ("[U]nder our constitutional scheme the States retain 'broad power' to legislate protection for their citizens in matters of local concern such as public health, and . . . not every exercise of local power is invalid merely because it affects in some way the flow of commerce between the States."); *Barsky* v. *Bd. of Regents of Univ.*, 347 U.S. 442, 449-50 (1954) ("It is elemental that a state has broad power to establish and enforce standards of conduct within its borders relative to the health of everyone. It is a vital part of a state's police power."); *Olszewski* v. *Scripps Health*, 30 Cal. 4th 798, 815 (2003) ("The regulation of public health and the cost of medical care are virtual paradigms of matters traditionally within the police powers of the state.").

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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.

Courts have frequently upheld state laws aimed at protecting public health and safety. *See, e.g.*, *Clason* v. *State of Indiana*, 306 U.S. 439, 443 (1939) ("The power of the state to prescribe regulations which shall prevent the production within its borders of impure foods . . . is well established. . . . Nor does it make any difference that such regulations incidentally affect interstate commerce, when the object of the regulation is not to that end, but is a legitimate attempt to protect the people of the state."). Indeed, "[t]he Supreme Court has even recognized states' 'right to impose even burdensome regulations in the interest of local health and safety.'" *Chinatown Neighborhood Ass'n*, 33 F. Supp. 3d at 1100 (quoting *H.P. Hood & Sons, Inc.* v. *Du Mond*, 336 U.S. 525, 535 (1949)); *see also Reid* v. *People of State of Colorado*, 187 U.S. 137, 151 (1902) (holding that although there is a right to ship live stock from one state to another, "the defendant is not given by that instrument the *right* to introduce into a state, against its will, live-stock . . . whose presence in the state will or may be injurious to its domestic animals").

AB 1437 advances the State's interest in protecting public health by requiring that all eggs sold in California come from hens that "are treated well and provided with at least minimum accommodation of their natural behaviors and physical needs." *See* Cal. Health & Safety Code § 25995(a) (citing a Pew Commission study finding that such eggs are "healthier and safer for human

consumption"). Without AB 1437, California merchants could sell eggs produced by hens confined in battery cages, and the California Legislature determined that those eggs are more likely to carry "disease pathogens including salmonella." *Id.* § 25995(e). States routinely and legitimately pass laws that prohibit the sale of goods that they believe injure the public health. Although the merits of the Commerce Clause challenge are not before the Court, Appellants' claim that they have standing based on their place in the federal system should be viewed skeptically, and in the context of what they seek to accomplish—to intrude upon the ability of California to exercise this "vital part of [its] police power." *Barsky*, 347 U.S. at 449-50.

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

Appellants' Statement of the Case contends that the purpose of AB 1437 was to benefit in-state businesses by burdening out-of-state competitors. (Appellants' Br. at 9-13). But Appellants' incomplete recitation of the legislative history does not begin to demonstrate that California's legislature was motivated by any purpose other than its stated purposes of protecting public health and preventing animal cruelty.

The stated purpose of AB 1437 is "to protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to significant

stress and may result in increased exposure to disease pathogens including salmonella." Cal. Health & Safety Code § 25995(e). The law was passed based on express legislative findings that, *inter alia*, "[e]gg-laying hens subjected to stress are more likely to have higher levels of pathogens in their intestines," while "food animals that are treated well . . . are healthier and safer for human consumption." Cal. Health & Safety Code § 25995(a),(c).

Appellants claim that these stated purposes were a pretext. (Appellants' Br. at 9-13). In assessing such a claim, courts "assume that the objectives articulated by the legislature are the actual purposes of the statute, unless an examination of the circumstances forces [it] to conclude that they could not have been a goal of the legislature." *Rocky Mountain Farmers Union* v. *Corey*, 730 F.3d 1070, 1097 (9th Cir. 2013) (quoting *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 463 n.7 (1981)). Here, Appellants fail to identify any basis to conclude that health and animal welfare could not have been goals of the Legislature.

As an initial matter, Appellants' suggestion that the Legislature intended to discriminate against out-of-state producers makes no sense. Discrimination under the Commerce Clause "means *differential* treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter." *Id.* at 1087 (emphasis added). AB 1437 unquestionably regulates only the

sale of goods in California, and does not distinguish between in-state and out-of-state producers. The law does not give California businesses any advantage over out-of-state competitors. Appellants' claim that the purpose of an even-handed law that facially and in effect treats in and out of state businesses equally was to "discriminat[e] against interstate commerce" (Appellants' Br. at 15) turns the dormant Commerce Clause on its head.

Even passing this basic problem, the legislative history does not provide any basis for concluding that the stated purposes of AB 1437 were a pretext. *First*, Appellants argue that the stated public health purpose of AB 1437 is necessarily pretextual because "no scientific study to date has found any correlation between cage size or stocking density and the incidence of Salmonella in egg-laying hens." (Appellants' Br. at 9.) Even if that were true—it is not[4]—whether current scientific evidence unilaterally supports the legislature's findings is irrelevant. *See Clover Leaf Creamery Co.*, 449 U.S. at 463-64. The Court

[4] *See, e.g.*, Brief for the Humane Society of the U.S., Dkt. No. 31 at 3 and citations therein. Echoing Appellants, *Amicus* the American Farm Bureau Federation ("AFBF") claims that "there is no evidence establishing that cage size has an effect on an egg's safety or fitness for human consumption." (Dkt. No. 12, at 21). However, the article the AFBF relies upon to support that proposition actually contradicts it—the article cites to a number of studies finding that stress resulting from caging situations "exacerbat[es] infection susceptibility in poultry and represent[s] both welfare and potential food safety problems" and "may subsequently manifest itself in increased *Salmonella* in the flock." *See* P.S. Holt, et al., *The Impact of Different Housing Systems on Egg Safety and Quality*, 90 Poultry Science 251, 253-54 (2011).

cannot second-guess the Legislature's findings unless they "could not reasonably be conceived to be true"—which Plaintiffs do not, and cannot, allege. *Id.* at 464. Indeed, one of the sources relied upon by Appellants in the First Amended Complaint states that "the majority of the studies indicate that housing of laying hens in conventional battery cages significantly increases the risk of detecting *Salmonella* compared to housing in non-cage systems." (Ex. 1, at 6.[5])

Second, Appellants rely on an analysis by the California Assembly Committee on Appropriations to argue that AB 1437's "true purpose" was "to protect California farmers from the market effects of Prop 2 by 'leveling the playing field.'" (Appellants' Br. at 10.) Appellants quote a portion of the "Rationale" section of the analysis, but ignore the portion that immediately follows, which states:

> Californians have a history of establishing basic animal welfare standards for the products they consume. In 1996, California voters banned the consumption, sale and transport of horse meat. 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.

[5] Citations to "Ex." refer to the exhibits filed concurrently with this brief. These exhibits were all before the District Court. Exhibit 1 is a more complete excerpt of a book referenced in the First Amended Complaint and was filed by *Amici* in the District Court. (Trial Court Dkt. No. 42.) Exhibits 2 and 3 are complete copies of exhibits to the First Amended Complaint; Appellants included only excerpts of these documents in their Excerpts of Record. Exhibit 4 was filed by *Amici* in the District Court. (Trial Court Dkt. No. 42.)

(ER 84.) Thus, to the extent this analysis reveals the Legislature's purpose, this passage demonstrates that the purpose was at least in part to promote animal welfare.

Moreover, a single committee analysis is insufficient to demonstrate pretext. In *Clover Leaf Creamery*, the milk sellers presented evidence that several legislators sought to obtain votes for a law by recounting "the evils of the out-of-state plastics industry and the need to protect Minnesota businesses." *See* Brief for Respondents at 30, *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456 (1981) (No. 79-1171), 1980 WL 339367 at *30. The Supreme Court found such evidence insufficient, explaining, "We will not invalidate a state statute . . . merely because some legislators sought to obtain votes for the measure on the basis of its beneficial side effects on state industry." *Clover Leaf Creamery,* 449 U.S. at 463 n.7; *see also In re Kelly*, 841 F.3d 908, 912 n.3 (9th Cir. 1988) ("Stray comments by individual legislators, not otherwise supported by statutory language or committee reports, cannot be attributed to the full body that voted on the bill."). *A fortiori*, the single analysis trumpeted by Appellants and their *Amici*, which was prepared by one person on a committee staff, does not begin to warrant a finding that the stated purpose of AB 1437 is a pretext. Appellants point to no evidence that the analysis was even considered by any legislator, much less that it accurately states the will of the Legislature in its entirety.

Third, Appellants cite the Enrolled Bill Reports ("Reports") prepared for Governor Arnold Schwarzenegger by the California Health & Human Services Agency ("CHHSA") and the Department of Food and Agriculture ("CDFA").[6] (Appellants' Br. at 11.) Appellants quote portions of the Reports suggesting that "[n]o scientific evidence" supports the assertion that AB 1437 will prevent Salmonella, and that "it will . . . be hard to ascribe any particular health risk for failure to comply [with AB 1437]" in considering arguments against the bill. (*Id*.) But the CHHSA Report also notes that "[s]ome informal reports claim that food animals, such as egg-laying hens, are healthier and safer for human consumption if the animals are provided with at least a minimum accommodation of their natural behaviors and physical needs." (Ex. 2 at 1.) As shown by the legislative findings incorporated into the bill, Cal. Health & Safety Code § 25995, regardless of what this particular staffer thought of the evidence, California's elected legislators accepted the evidence of a connection between Salmonella and housing for egg-laying hens. Again, states need not "convince the courts of the correctness of their legislative judgments." *Clover Leaf Creamery Co.*, 449 U.S. at 464.

Appellants also cite the CDFA Report's discussion of providing a "level playing field for California's shell egg producers" because "[w]ithout a level

[6] Statements made by state administrative agencies *after* the California Assembly and Senate had already passed AB 1437 constitute only "weak evidence of legislative intent." *See Maine* v. *Taylor*, 477 U.S. 131, 150 (1986).

playing field . . . companies in California will no longer be able to operate in this state and will either go out of business or be forced to relocate to another state." (ER 82.) But that statement was in the context of analyzing the bill's fiscal and economic impact. (*Id.*) The fact that a state agency advised the Governor of AB 1437's "beneficial side effects on state industry" does not convert it into protectionist legislation. *See Clover Leaf Creamery*, 449 U.S. at 463 n.7. Indeed, the Report also states that one of the "cons" of AB 1437 is that it "could limit the volume of shell eggs imported for consumption." (Ex. 3 at 8.) Far from being motivated by protectionism, the CDFA considered the risk of a decrease in out-of-state imports to be a *disadvantage* that the Governor ought to consider. And, the CHHSA Report cited by Appellants expressly confirms that the purpose of AB 1437 is to protect public health. (Ex. 2 at 1 ("The purpose of the bill is to protect California consumers from increased exposure to disease pathogens, including salmonella, by improving living conditions and overall health of egg-laying hens.")).

Fourth, Appellants contend that the Governor's signing statement shows that AB 1437's purpose is not to protect public health, but actually to "protect[] California farmers from the market effects of Prop. 2." (Appellants' Br. at 13.) First of all, because using *executive* statements to determine *legislative* intent raises separation of powers concerns, courts routinely question the use of

such statements. *See 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."). Moreover, the Governor's statement does not support Appellant's argument. In his signing statement, the Governor stated: "The voters' overwhelming approval of Proposition 2 demonstrated their strong support for the humane treatment of egg producing hens in California. By ensuring that all eggs in California meet the requirements of Proposition 2, this bill is good for both California egg producers *and animal welfare*." (ER 50 (emphasis added).) Insofar as the Governor's statement is evidence of *legislative* intent, the statement shows that the Governor was motivated by concerns about animal welfare. Therefore, it fails to show that public health and animal welfare "could not have been a goal" of AB 1437. *See Clover Leaf Creamery Co.*, 449 U.S. at 463 n.7.

Finally, Appellants fail to mention legislative analysis supporting the conclusion that the Legislature considered and accepted evidence that AB 1437 would protect public health. (Ex. 4 at 1.) On the day the bill passed the Senate, the Office of Senate Floor Analyses released a bill analysis explaining AB 1437 as

a means of protecting public health and welfare: "According to the author's office, requiring all eggs sold for human consumption in California to conform to animal care standards will protect California's consumers' health and welfare. Reports cited by the author state that egg-laying hens subjected to stress have a greater chance of carrying bacteria or viruses, thus having a greater chance of exposing consumers to food borne bacteria and viruses." (*Id.*) Thus, the bill's author intended the law to protect the health of consumers, and the analysis presented to the Senate reflected that intention. To the extent it is relevant to the issues on appeal, Appellants' contention that AB 1437 was passed as economic protectionism rather than to protect the public health and animal welfare should be rejected.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to affirm the District Court's judgment.

Dated: June 8, 2015

Respectfully submitted,

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Date Jun 8, 2015