

Krueger v. Arizona Department of Agriculture – Background

Executive Summary

Grant Krueger has been in the restaurant business for 34 years, and he works hard to run outstanding businesses for his customers and employees alike, despite the industry’s razor-thin margins. But in April 2022, the Arizona Department of Agriculture (“AZDA”) made Grant’s job even harder when it short-circuited constitutional separation of powers and took it upon itself to make new law that should have been decided through the democratic process. AZDA enacted a new regulation unilaterally—without consulting the Legislature or the countless Arizonans the regulation would affect— requiring that only cage-free eggs can be produced or sold in Arizona.

The people of Arizona should have a say in whether to adopt sweeping new requirements governing how eggs are produced, what kinds of eggs may be sold, and how much those eggs will cost. AZDA’s decision to unilaterally impose these requirements exemplifies the problems of the undemocratic, unaccountable administrative state that wields so much power over ordinary Americans’ lives. It violates Arizona’s clear constitutional mandate of separation of powers, as well as Arizona statutes forbidding unelected bureaucrats from imposing regulations that aren’t (1) specifically authorized by law and (2) reasonably necessary to carry out a statutory purpose.

The Goldwater Institute and Pacific Legal Foundation have joined forces to challenge this unlawful and unconstitutional regulation, and to defend the rights of Arizonans to limited, democratically-accountable government.

Background

Grant Krueger is a longtime Arizona resident and business owner who’s worked in the restaurant industry for 34 years. After starting out as a dishwasher and bus boy, Grant has worked his way up to running Union Hospitality Group, which owns and operates three different restaurants in the Tucson area.

In April 2022, however, AZDA enacted a new regulation (the “Cage-Free Egg Rule”) requiring that all egg-laying hens in Arizona be housed in a cage-free manner, and that all eggs and egg products sold in Arizona come from hens raised in the same way. AZDA justified this drastic new regulation as a response to what it perceived as “the public’s growing concerns about animal welfare,” as well as “market trends” in egg production.¹ AZDA also acknowledged that the new requirements would likely drive up egg prices for Arizona consumers and businesses.² Critically, however, AZDA short-circuited the democratic process, including a potential ballot initiative that would have allowed the

¹ 28 A.A.R. 803.

² 28 A.A.R. 804.

people of Arizona to decide the issue for themselves, when it took matters into its own hands and imposed this regulation on Arizona residents and businesses.

Grant and his restaurant business have already seen egg prices rise as a result of AZDA's unilateral decision to impose these new regulations. Grant works hard to maintain successful restaurants on razor-thin margins, and he knows what it takes to offer an excellent customer experience at affordable prices, all while budgeting for employee payroll, overhead, and food costs. Along with other ingredients, he buys more than 2,000 eggs per week to supply his restaurants. Along with the millions of other Arizonans who buy, sell, or eat eggs, Grant is bearing the costs of a decision he had no say in—a decision made by bureaucrats who bypassed the democratic process because they felt they knew best.

Legal Analysis

The legal issues in this case involve what lawyers call “delegation.” In our constitutional structure, all power derives from the people, and people entrust certain powers to different branches of the government, along with checks and balances to hold the government accountable in its exercise of those powers.

One key principle of our constitution is that the legislative power—the power to make laws—is vested in the legislature. Far too often, however, legislatures “delegate” their legislative power to administrative agencies. This is a problem because it undermines democratic accountability, giving unelected, anonymous bureaucrats wide-ranging power over people's lives and livelihoods. This problem accounts for much of the rise of the administrative state over the past century, during which government agencies and bureaucrats have seized more and more power that can only be legitimately exercised by elected officials.

Fortunately, Arizona has some of the best legal safeguards in place to guard against improper delegations of legislative power to administrative agencies. Arizona's Constitution includes an explicit separation-of-powers clause, providing that Arizona's government consists of three branches—legislative, executive, and judicial—and that “such departments shall be separate and distinct, and no one of such departments shall exercise the powers properly belonging to either of the others.”³ To further guard against encroachment by administrative agencies on other branches' powers, the Arizona Legislature has passed statutes forbidding any agency from “mak[ing] a rule that is not specifically authorized by statute,”⁴ and from enacting any regulation that is not “reasonably necessary to carry out the purpose of the statute.”⁵

³ Ariz. Const. art. III.

⁴ A.R.S. § 41-1030(D)(3).

⁵ A.R.S. § 41-1030(A).

The Cage-Free Egg Rule violates all three of these legal safeguards. First, it's not specifically authorized by statute: the relevant statutes merely authorize AZDA to "adopt administrative rules to effect its program and policies," and to "adopt rules for poultry husbandry and the production of eggs sold in" Arizona.⁶ Second, the regulation is not reasonably necessary to carry out any purpose authorized by statute. In fact, the justifications AZDA itself gave for the regulation—public opinion about animal welfare and egg producers' opposition to a ballot initiative—have nothing to do with the goals the Legislature has given AZDA in regulating "poultry husbandry" or the "production of eggs."

Third, assuming the regulation has *any* statutory authorization, it's a product of an unconstitutional delegation of legislative authority. Under the Arizona Constitution, if the Legislature empowers an agency to enact regulations, it must provide adequate standards, limitations, and policies to guide the agency's actions. Here, however, the statutes in question provide virtually no guidance at all to AZDA: they merely authorize AZDA to "adopt administrative rules to effect its program and policies," and to "adopt rules for poultry husbandry and the production of eggs," without identifying how AZDA should craft or enforce such rules, what goals or principles should guide its regulatory actions, and so on. Just as these regulations do not provide specific authorization for the Cage-Free Egg Rule, they also fail to give meaningful direction or limitations on AZDA's regulatory power, and therefore, they violate the Arizona Constitution.

Case Logistics

The case is *Krueger v. Arizona Department of Agriculture*. The complaint was filed on November 15, 2023, in Maricopa County Superior Court.

The Legal Team

Grant Krueger and Union Hospitality Group are represented by lawyers with the Goldwater Institute and Pacific Legal Foundation.

For the Goldwater Institute: **Jon Riches** is the Vice President for Litigation for the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation and General Counsel for the Institute. He litigates in federal and state trial and appellate courts in the areas of economic liberty, regulatory reform, free speech, taxpayer protections, public labor issues, government transparency, and school choice, among others. Jon has litigated cases in multiple state and federal trial and appellate courts. **John Thorpe** is a Staff Attorney at the Goldwater Institute's Scharf-Norton Center for Constitutional Litigation, where he litigates in the areas of education, free speech, economic liberty, government transparency, regulatory reform, and property rights.

⁶ A.R.S. §§ 3-107(A)(1), 710(J).

For Pacific Legal Foundation: **Adi Dynar** is an attorney with extensive experience protecting people's civil rights as a litigator, speaker, and activist. He has represented parties in state and federal courts across the nation in challenging the overreach of administrative agencies. **Josh Robbins** is an attorney in Pacific Legal Foundation's separation of powers group who litigates cases to defend the structural protections of the U.S. and state constitutions that guarantee liberty for all Americans.