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14 **SUPERIOR COURT OF ARIZONA**  
15 **MARICOPA COUNTY**

17 UNION LLC d/b/a UNION  
18 HOSPITALITY GROUP, an Arizona  
19 limited liability company; and GRANT  
20 KRUEGER, an individual,

21 Plaintiffs,

22 v.

23 STATE OF ARIZONA; and PAUL E.  
24 BRIERLEY, Director of Arizona  
25 Department of Agriculture, in his official  
26 capacity,

27 Defendants.

No. CV2023-018151

**DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**Oral Argument Requested**

(Hon. Scott A. Blaney)



1 business or agriculture production, and he or she must report the Department’s activities  
2 to the Governor and Legislature each year. *Id.* ¶ 5.

3 **2008 Directive at Issue:** In 2008, the Legislature directed the Department to  
4 “adopt rules for poultry husbandry and the production of eggs sold in this state.” DSOF  
5 ¶ 6; A.R.S. § 3-710(J). This directive applied only to large egg producers—i.e., producers  
6 with ranches of at least “twenty thousand egg-laying hens producing eggs.” DSOF ¶ 7;  
7 A.R.S. § 3-710(J). The Legislature also declared that “[c]onsistency of poultry husbandry  
8 practices for the production of eggs is a statewide matter” and thus preempted political  
9 subdivisions in Arizona from regulating the matter. DSOF ¶ 8; A.R.S. § 3-710(K).

10 Legislative materials for this 2008 directive defined “poultry husbandry” as “the  
11 practice of breeding and raising poultry for consumption” and stated that such standards  
12 include “animal health” and “facility recommendations, including spacing of animals.”  
13 DSOF ¶¶ 9, 11. As a specific example of husbandry guidelines, legislative materials  
14 mentioned guidelines issued by United Egg Producers (“UEP”). *Id.* ¶ 10. Legislative  
15 materials also stated that the Department “protects the health, quality, and marketability  
16 of Arizona’s animals and animal products.” *Id.* ¶ 12.

17 The law’s sponsor, Senator Burns, explained that “it would certainly be helpful to  
18 the industry to have some guidelines in place” and that the law would also protect  
19 “consumers.” *Id.* ¶ 13. Representative Kavanaugh described the law as a step forward in  
20 terms of “protecting animals from poor treatment.” *Id.* ¶ 14.

21 **Other Legislative Directives:** As part of the same 2008 law, the Legislature  
22 authorized the Department to set “standards for egg processing plants and sanitary  
23 standards for the processing of shell eggs.” DSOF ¶ 15; A.R.S. § 3-710(I).

24 In 2019, the Legislature also authorized the Department to establish an “egg  
25 promotion program to provide certification, inspection, and grading services,” and to  
26 “[a]dopt rules to administer” this program. DSOF ¶ 16; A.R.S. § 3-710(L).

1 **II. The Department has faithfully adopted rules pursuant to the Legislature’s**  
2 **2008 directive, including in 2009, 2020, and 2022.**

3 **A. Rules adopted in 2009 and 2020**

4 In 2009, the Department adopted R3-2-907, named “Poultry Husbandry; Standards  
5 for Production of Eggs.” DSOF ¶ 17. The rule included two parts:

6 1) For large egg producers in Arizona, hens must be raised according to the  
7 2008 UEP Guidelines, or “raised cage-free.”

8 2) For eggs sold in Arizona that come from large producers, the eggs must be  
9 from hens raised according to the 2008 UEP Guidelines, or “raised cage-free.”

10 *Id.* ¶¶ 18–21.

11 The Department described the 2008 UEP Guidelines as “best management  
12 practices by the egg production industry” to ensure “safe consumption of quality-  
13 produced eggs” and to recognize “growing concern for animal welfare.” *Id.* ¶ 22. The  
14 Department did not believe that its new rules would “significantly affect caged-facility  
15 egg producers” in Arizona, as these producers were already UEP certified. *Id.* ¶ 23.

16 In 2020, the Department updated these rules to refer to the 2017 UEP Guidelines  
17 instead of the 2008 UEP Guidelines. *Id.* ¶ 24.

18 **B. Rules adopted in 2022 (the “Cage-Free Egg Rule”)**

19 In early 2021, animal rights groups submitted to the Secretary of State an initiative  
20 (the “Initiative”), to be presented to voters in the 2022 election. DSOF ¶ 25. The Initiative  
21 would have required egg producers and egg sellers in Arizona to adopt cage-free practices  
22 by May 1, 2023, or face criminal liability. *Id.* ¶¶ 26–28. Unlike A.R.S. § 3-710(J) and  
23 (K), the Initiative would have contained no exemption for small producers; it would have  
24 prohibited the Department from using third parties to ensure compliance; and it would  
25 have allowed political subdivisions to adopt “more stringent” laws. *Id.* ¶¶ 29–31.

26 Hickman’s Family Farms (“Hickman’s”) is one of two large egg producers in  
27 Arizona. *Id.* ¶ 45. For reference, Hickman’s sold “approximately half of all table eggs  
28 consumed” in Arizona in 2021. *Id.* ¶ 62.

1 In August 2021, Hickman’s asked the Department to pursue an alternative to the  
2 Initiative: a gradual transition to cage-free standards by 2025, not by the Initiative’s  
3 timeline of May 1, 2023. *Id.* ¶ 32. Although Hickman’s had already converted about  
4 25% of its operations to cage-free and planned to convert more, Hickman’s described the  
5 Initiative’s timeline as “impossible” and warned that, if it passed (as all similar initiatives  
6 had), Hickman’s egg production in Arizona could “shrink to half” “virtually overnight.”  
7 *Id.* ¶¶ 33–35. Hickman’s also stated that a cage-free transition would “align Arizona’s  
8 poultry standards with evolving husbandry standards and consumer demands.” *Id.* ¶ 36.

9 **1. The Department’s proposal of a gradual cage-free transition**

10 In January 2022, the Department publicly proposed adopting a gradual cage-free  
11 transition, which would be done by modifying its existing rules in the following ways:

- 12 1) Starting in October 2022, for large egg producers in Arizona, hens must be  
13 raised according to the 2017 UEP Guidelines *and* must have at least one square  
14 foot of floor space per hen, or be “raised cage-free.”
- 15 2) Starting in October 2022, for eggs sold in Arizona that came from large  
16 producers, the eggs must be from hens that are raised according to the 2017 UEP  
17 Guidelines *and* that have at least one square foot of floor space per hen, or from  
18 “hens that are raised cage-free.”
- 19 3) Starting in October 2022, businesses that sell eggs or egg products in  
20 Arizona would need a certificate that their suppliers comply with the above rules  
21 or are exempt. Businesses could rely on a supplier’s own written certification.
- 22 4) Starting in January 2025, for large egg producers in Arizona, hens must be  
23 “housed in a cage-free manner,” defined as following cage-free standards in the  
24 2017 UEP Guidelines and providing a specified kind of controlled environment.
- 25 5) Starting in January 2025, for eggs and egg products sold in Arizona that  
26 came from large producers, the eggs must be “from hens housed in a cage-free  
27 manner,” defined the same way.

28 *Id.* ¶¶ 37–41.

Here is a summary of the Department’s proposed modifications:

Rules in place, as of 2021	Proposed modifications, starting in October 2022	Proposed modifications, starting in January 2025
<p><u>For large egg producers:</u></p> <p>Hens in AZ must be:</p> <p>(1) raised according to 2017 UEP Guidelines, <u>or</u></p> <p>(2) raised cage-free.</p>	<p><u>For large egg producers:</u></p> <p>Hens in AZ must be:</p> <p>(1) raised according to 2017 UEP Guidelines <i>and</i> given <math>\geq</math> 1 sq. ft. of floor space per hen, <u>or</u></p> <p>(2) raised cage-free.</p>	<p><u>For large egg producers:</u></p> <p>Hens in AZ must be housed in a cage-free manner.</p> <p>“Housed in a cage-free manner” = following cage-free standards in 2017 UEP Guidelines and providing a specified kind of environment.</p>
<p><u>For egg sellers:</u></p> <p>Eggs sold in AZ, if they came from large producers, must be:</p> <p>(1) from hens raised according to 2017 UEP Guidelines, <u>or</u></p> <p>(2) from hens raised cage-free.</p>	<p><u>For egg sellers:</u></p> <p>Eggs and egg products sold in AZ, if they came from large producers, must be:</p> <p>(1) from hens raised according to 2017 UEP Guidelines <i>and</i> given <math>\geq</math> 1 sq. ft. of space per hen, <u>or</u></p> <p>(2) from hens raised cage-free.</p> <p>Sellers must have a certificate that suppliers complied or were exempt, and may rely on suppliers’ own written certifications.</p>	<p><u>For egg sellers:</u></p> <p>Eggs and egg products sold in AZ, if they came from large producers, must be from hens housed in a cage-free manner (defined above).</p> <p>Sellers must have a certificate that suppliers complied or were exempt, and may rely on suppliers’ own written certifications.</p>

As part of its rationale, the Department explained that a major goal was to stabilize egg supply. If the Initiative were to pass, requiring cage-free conversion by May 1, 2023, Hickman’s “may have to euthanize a portion of its flock to avoid criminal penalties,” which would “suddenly and dramatically reduce Arizona egg supply.” *Id.* ¶ 42. In contrast, the Department’s proposal would give producers “additional time.” *Id.* ¶ 43.

The Department also explained that its proposal “would theoretically impact” only two Arizona egg producers: Rose Acre Farms and Hickman’s. But Rose Acre would not

1 be impacted because its Arizona production was already cage-free, and Hickman’s had  
2 already converted more than 25% to cage-free and planned to convert more. *Id.* ¶ 45.

3 The Department also noted that, “irrespective of” its proposal, Hickman’s believed  
4 that it “will ultimately have to transition all or a significant portion of” its production “to  
5 cage-free by 2025,” to meet consumer demands and legal shifts in other states. *Id.* ¶ 46.  
6 The Department noted that consumer demands had caused “most food retailers and  
7 restaurants to pledge that, by 2025, they will only purchase and sell cage-free eggs,” and  
8 nearby states were requiring cage-free transitions “in the next 1–5 years.” *Id.* ¶¶ 47–48.

9 The Department also explained that its proposal was “intended to represent the  
10 best management practices in the shell egg industry that ensure the production of high-  
11 quality, cruelty-free eggs.” *Id.* ¶ 49.

12 The Department also explained that its proposal “will ultimately reduce producers’  
13 overall costs” compared with the Initiative. *Id.* ¶ 44. The Department also estimated that  
14 cage-free production costs could be slightly higher than caged-facility costs. *Id.* ¶ 50.

15 The Department also noted that changes in egg production costs are often not  
16 passed on to consumers, because “retailers and brokers have a greater impact on the cost  
17 of eggs to consumers than the actual costs of producing.” *Id.* ¶ 51. Nevertheless, the  
18 Department estimated that, if the slight difference in cage-free vs. caged-facility  
19 production costs were reflected in consumer prices, the difference for consumers would  
20 be “between \$2.71 and \$5.42 per year.” *Id.* ¶ 52.

## 21 **2. Comments on the Department’s proposed cage-free transition**

22 The Department has an Advisory Council. *See* A.R.S. § 3-104(F). At an Advisory  
23 Council meeting in January 2022, an agriculture representative reported that the Humane  
24 Society (“HSUS”) had surveyed Arizona voters and found that 78% would approve the  
25 Initiative. DSOF ¶¶ 53–54 & n.3. The agriculture representative said: “I don’t think . . .  
26 we could collect enough money to even put a dent” in the Initiative. *Id.* ¶ 54.

27 Another agriculture representative described “voter research” that had been done  
28 since Prop. 204 passed in Arizona in 2006. DSOF ¶ 55. For context, Prop. 204 was a

1 ballot initiative that made it a crime to “tether or confine” certain pigs or calves in certain  
2 ways, and it passed with 62% approval. *Id.* n.4. According to the agriculture  
3 representative, research after Prop. 204 showed that, while voters normally vote in a  
4 “cognitive” state, voters cast an “emotional” vote on animal rights issues. *Id.*

5 A Department representative reported that HSUS “will back off of” the Initiative  
6 if the Department were to adopt a cage-free transition, and the CEO of Hickman’s  
7 reported that he had assurance “in writing” from HSUS to that effect. *Id.* ¶¶ 56–57 & n.5.

8 A Hickman’s representative also reported that U.S. cage-free practices had nearly  
9 “doubled since 2017,” and “almost all the major retailers,” including Safeway, had  
10 committed to cage-free sources by 2025. *Id.* ¶ 58. The CEO of Hickman’s also explained  
11 that “the price at which we sell to retailers” is “barely related” to retail prices. *Id.* ¶ 59.

12 Written comments in support of the Department’s proposal included:

- 13 • A letter from four legislators, assuring the Department that the Legislature  
14 had given it rulemaking authority and that the Department’s proposed cage-free  
15 transition would “ensure[] an adequate and affordable supply” of eggs. *Id.* ¶ 60.
- 16 • A letter from Hickman’s, describing the Department’s proposal as  
17 “absolutely necessary to prevent disruption of Arizona’s egg market.” *Id.* ¶ 61.
- 18 • A comment from animal rights groups, explaining that cage-free standards  
19 promote public safety by “setting requirements such as stocking density which  
20 reduces illness and disease spread,” and identifying a “direct, well-documented  
21 link” between Salmonella and caged confinement of hens. *Id.* ¶ 63.
- 22 • An economist’s declaration that explained that the U.S. market for cage-  
23 free eggs is growing and described a California measure, Prop. 12, which increased  
24 spacing for hens and passed with 63% voter approval in 2018. *Id.* ¶¶ 64–65.

### 25 **3. The Department’s adoption of a gradual cage-free transition**

26 In April 2022, the Department issued a notice of final rulemaking, adopting its  
27 proposed transition to cage-free standards (the “Cage-Free Egg Rule”). DSOF ¶¶ 66–67.

28

1 As part of its rationale, the Department reiterated “significant concerns” about how  
2 the Initiative’s timeline would affect Arizona’s egg supply, and the Department  
3 emphasized that its Cage-Free Egg Rule would give producers “more time to convert.”  
4 *Id.* ¶ 68. The Department also repeated its earlier observations about increased consumer  
5 demand for cage-free practices, legal shifts toward cage-free practices in other states, and  
6 commitments by major companies to source cage-free eggs. *Id.* ¶ 69.

7 The Department continued to maintain that its Cage-Free Egg Rule was “intended  
8 to represent the best management practices in the shell egg industry that ensure the  
9 production of high-quality, cruelty-free eggs.” *Id.* ¶ 70.

10 The Department expressly deemed the Initiative a “probabl[e] regulatory  
11 alternative” to its Cage-Free Egg Rule. *Id.* ¶ 72. The Department also noted that it had  
12 received 1,659 comments supporting the Rule and only 114 comments opposed. *Id.* ¶ 71.

13 The Department explained that its Cage-Free Egg Rule “will significantly reduce  
14 [its own] regulatory costs” as compared with the Initiative, because it will allow the  
15 Department to rely on “third party certifications.” *Id.* ¶ 73. The Department also  
16 reiterated that cage-free production costs are slightly higher than caged-facility costs. *Id.*  
17 ¶ 74. The Department also estimated that, if the slight difference in cage-free vs. caged-  
18 facility production costs were reflected in consumer prices, the difference for consumers  
19 would be “between \$2.71 and \$8.79” per year.” *Id.* ¶ 75.

20 **III. The Department has delayed enforcement of the Cage-Free Egg Rule.**

21 In August 2022, May 2024, and November 2024, the Department delayed  
22 enforcement of the Cage-Free Egg Rule—first in part, then in whole. DSOF ¶¶ 80–82.  
23 As a result, the Department has been enforcing only its pre-2022 rules. *Id.* ¶ 83.

24 Currently, the Department is also engaged in further rulemaking to determine  
25 whether the Cage-Free Egg Rule’s implementation will be delayed or otherwise modified.  
26 This is explained in Defendants’ motion for a stay of proceedings (filed earlier today).

1 **IV. Plaintiffs claim that the Cage-Free Egg Rule has injured or will injure them.**

2 Plaintiffs are an individual (Grant Krueger) and a restaurant business (Union LLC  
3 or “Union”). Four of their claims assert that the Cage-Free Egg Rule violates APA  
4 provisions. First Am. Compl. (Dec. 12, 2023) (“Am. Compl.”), ¶¶ 76–111. Their fifth  
5 claim asserts that the Legislature violated Arizona’s Constitution in 2008, when it directed  
6 the Department to adopt rules for poultry husbandry and the production of eggs sold in  
7 Arizona. *Id.* ¶¶ 112–133.

8 Regarding injury, Mr. Krueger claims that he “will lose the ability to purchase eggs  
9 he would otherwise purchase” and “will suffer a pecuniary loss as a direct result of the  
10 Cage-Free Egg Rule increasing the price of eggs sold in Arizona over what the price  
11 would be without the rule.” *Id.* ¶ 13. Similarly, Union claims that it “will lose the ability  
12 to purchase the eggs and egg products it has long relied on as a direct result of the Cage-  
13 Free Egg Rule” and “will also suffer a pecuniary loss as a direct result of the Cage-Free  
14 Egg Rule increasing the price of eggs sold in Arizona over what the price would be  
15 without the rule.” *Id.* ¶ 12.

16 Before discovery, Defendants moved to dismiss for lack of standing, and Plaintiffs  
17 cross-moved for summary judgment. The Court denied Defendants’ motion, stating that  
18 Plaintiffs “sufficiently alleged statutory standing” under the APA. Under Advisement  
19 Ruling (Nov. 4, 2024) (“Prior Ruling”), pg. 2. The Court also denied Plaintiffs’ motion,  
20 stating that Plaintiffs “must demonstrate to the finder of fact, *inter alia*, the ‘negative  
21 economic impact’ on which they rely to establish standing.” *Id.*, pg. 3.

22 **ARGUMENT**

23 **I. The Court should grant summary judgment on APA claims (Counts I–IV).**

24 The APA claims fail as a matter of law for three independent reasons. First, the  
25 relevant APA provisions did not exist when the Department adopted the Cage-Free Egg  
26 Rule and do not apply retroactively. Second, Plaintiffs lack standing under the APA.  
27 Third, even if the APA provisions apply retroactively, the Cage-Free Egg Rule complied.  
28

1           **A.     The relevant APA provisions do not apply retroactively.**

2           In Counts I–IV, Plaintiffs assert that the Cage-Free Egg Rule was not “specifically  
3 authorized by statute” (A.R.S. § 41-1030(A)), nor was it “reasonably necessary to carry  
4 out the purpose of the statute” (A.R.S. § 41-1030(D)(3)). But both of these quoted APA  
5 provisions are relatively new. They were signed by the Governor on May 27, 2022, and  
6 became effective on September 24, 2022. DSOF ¶¶ 77–78.

7           The Department had already acted by then. The Department proposed the Cage-  
8 Free Egg Rule in January 2022 and adopted it in April 2022. *Id.* ¶¶ 37, 66. While the  
9 Department always strives to comply with its rulemaking duties under the APA, it cannot  
10 be expected to comply with duties that do not yet exist.

11           Perhaps the Legislature could have made these new APA provisions retroactively  
12 applicable to past rulemaking. But doing so would have at least required an express  
13 legislative declaration that the provisions are retroactive. This is because “[n]o statute is  
14 retroactive unless expressly declared therein.” A.R.S. § 1-244.

15           Here, the Legislature did not expressly declare that these APA provisions apply  
16 retroactively. DSOF ¶ 79. And a retroactive application would be unwise, because then  
17 people could challenge decades-old rules on the basis that, all along, the rules were never  
18 “reasonably necessary to carry out the purpose of the statute,” however defined. A.R.S.  
19 § 41-1030(D)(3). Given the lack of retroactivity, Counts I–IV fail as a matter of law.

20           **B.     Plaintiffs lack standing under the APA.**

21           Under the APA, “[a]ny person who is or may be affected by a rule may obtain a  
22 judicial declaration of the validity of the rule” by suing in superior court. A.R.S. § 41-  
23 1034(A). Previously, the Court found that Plaintiffs had “sufficiently alleged statutory  
24 standing” by alleging, for example, that “Plaintiffs and their customers will suffer  
25 quantifiable economic harm as a direct result of the rule.” Prior Ruling, pg. 2.<sup>1</sup>

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26  
27  
28 <sup>1</sup> Because the Court found that Plaintiffs had sufficiently alleged statutory standing, the Court “decline[d] to address” Defendants’ “additional arguments” regarding standing. Defendants do not waive any arguments made at the motion-to-dismiss stage.

1           Discovery has revealed that Plaintiffs’ allegations are unsupported in many ways.  
2 **First**, although Plaintiffs allege that the Cage-Free Egg Rule negatively impacts them  
3 compared with what “would” have happened, *e.g.*, Am. Compl. ¶¶ 12–13, they ignore the  
4 most likely thing that would have happened absent the Rule: the Initiative passing.

5           The record is clear on this point. HSUS had surveyed Arizona voters and found  
6 that 78% would approve the Initiative. DSOF ¶ 54 & n.3. Two similar animal rights  
7 initiatives—Prop. 204 in Arizona and Prop. 12 in California—had passed with 62% and  
8 63% support. *Id.* ¶¶ 55 n.4, 65, 115. Voter research had shown that voters tend to rely  
9 on emotion when it comes to animal rights issues, even if it might raise their own prices.  
10 *Id.* ¶¶ 55, 115. Indeed, the Department judged the Initiative to be a “probabl[e] regulatory  
11 alternative” to the Cage-Free Egg Rule, and Plaintiffs do not disagree. *Id.* ¶¶ 72, 87, 99.

12           Even Plaintiffs’ own expert agreed that “to evaluate the economic impact of the  
13 Cage-Free Egg Rule it’s important to consider what would have happened but-for the  
14 Rule being issued.” *Id.* ¶ 113. Thus, consideration of the Initiative is critical here.

15           Had the Initiative passed, Plaintiffs would have been *worse* off under their own  
16 theories. The Initiative would have required a cage-free transition much faster, on a  
17 timeline that Hickman’s deemed “impossible” and that the Department believed would  
18 threaten Arizona’s egg supply. DSOF ¶¶ 25–28, 33–35, 42–44, 60–61, 68. In addition,  
19 the Initiative would have eliminated the statutory exemption for small egg producers and  
20 would have allowed political subdivisions to adopt more stringent laws. *Id.* ¶¶ 29, 31.

21           In sum, to the extent Plaintiffs think the Department’s gradual cage-free transition  
22 was bad for them, the likely alternative (the Initiative) would have been worse. Plaintiffs  
23 offer no evidence otherwise. *Id.* ¶¶ 100, 114. This by itself warrants summary judgment.

24           **Second**, even aside from the Initiative, Plaintiffs’ theory that the Cage-Free Egg  
25 Rule will increase their egg prices rests on unsupported conjectures.<sup>2</sup> Let us assume (for  
26

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27 <sup>2</sup> In addition to “eggs,” Union alleged that it sometimes uses “egg products.” Am. Compl.  
28 ¶ 12. But Union does not currently buy or use egg products, nor does it anticipate doing  
so, absent some very rare situation where eggs might be unavailable. DSOF ¶ 101.

1 purposes of this motion) that cage-free production costs are slightly higher than caged-  
2 facility costs, as the Department estimated. DSOF ¶ 50. Plaintiffs are not egg producers,  
3 *id.* ¶¶ 85, 98, so this difference does not mean the Cage-Free Egg Rule will increase *their*  
4 egg prices—unless (1) the Cage-Free Egg Rule is the reason why an egg producer  
5 converts to cage-free, and (2) that producer was supplying the eggs that Plaintiffs buy.

6 Both of these conjectures are unsupported. As to the first, Plaintiffs offer no  
7 admissible evidence that the Cage-Free Egg Rule will be the reason why any specific egg  
8 producer converts to cage-free. Indeed, there are only two large egg producers in Arizona:  
9 one (Rose Acre Farms) was not affected by the Cage-Free Egg Rule because its Arizona  
10 facilities were already cage-free, and the other (Hickman’s) believed that, regardless of  
11 the Rule, it “will ultimately have to transition all or a significant portion of their shell egg  
12 production to cage-free by 2025” anyway, because of consumer demands and legal shifts  
13 elsewhere. DSOF ¶¶ 45–48, 69. And as to the second conjecture: Even if Plaintiffs could  
14 identify a producer whose practices will change because of the Cage-Free Egg Rule,  
15 Plaintiffs cannot connect that producer to their own egg prices because they *do not know*  
16 which producers supply the eggs they buy. *Id.* ¶¶ 89–90, 103, 105, 108, 120, 122–25.

17 There is more. Even if we assume that (1) the Cage-Free Egg Rule is the reason  
18 why an egg producer converts to cage-free and (2) this producer was supplying eggs that  
19 Plaintiffs buy, that *still* does not mean Plaintiffs’ own egg prices will increase—unless  
20 the producer passes on its increased costs to an intermediary (a retailer or wholesaler),  
21 who decides to pass them on to Plaintiffs by increasing their prices. But that is conjecture  
22 too, because intermediaries might absorb cost increases instead of raising prices—as  
23 acknowledged by the Department, Hickman’s, and Plaintiffs. *Id.* ¶¶ 51, 59, 96, 130, 138.

24 Plaintiffs’ expert tries to fill these gaps with evidence that the national average  
25 wholesale price of cage-free eggs is usually (not always) higher than that of caged-facility  
26 eggs. *See id.* ¶¶ 116–17. Even assuming this is true, national average information is not  
27 evidence of Plaintiffs’ specific purchases. In specific times and places, cage-free eggs  
28 are often *less* expensive than caged-facility eggs. *Id.* ¶¶ 133–35. And even Plaintiffs’

1 expert admits that he has “not estimated the particular impact to the plaintiffs” of the  
2 Cage-Free Egg Rule, nor has he attempted to quantify how much he thinks the Rule will  
3 affect Arizona restaurants and consumers. *Id.* ¶¶ 121–25.

4 Plaintiffs also provide anecdotal evidence of their experiences after the Cage-Free  
5 Egg Rule was adopted, but these anecdotes only highlight the limits of their personal  
6 knowledge. For starters, because the Department has delayed enforcement of the Rule, it  
7 is unlikely that the Rule has *already* affected Plaintiffs in a discernible way. *Id.* ¶¶ 80–  
8 83. Indeed, Plaintiffs’ expert declined to opine on whether the Rule already had an effect,  
9 as he understood that “the impact” of the Rule is not yet “realized.” *Id.* ¶¶ 118–19.

10 Despite the fact that the Rule is not being enforced, Mr. Krueger asserts that he  
11 doesn’t “believe” he can buy caged-facility eggs at Safeway anymore—though he can  
12 still buy them elsewhere. *Id.* ¶¶ 88, 92–94. Even assuming that Mr. Krueger’s assertions  
13 about Safeway are accurate, this does not mean the Cage-Free Egg Rule is what caused  
14 Safeway to stop selling caged-facility eggs to Mr. Krueger. Indeed, Safeway committed  
15 to sourcing cage-free eggs *before* the Department adopted the Rule. *Id.* ¶¶ 58, 95.

16 Similarly, Mr. Krueger (on behalf of Union) asserted that, in 2023, a Sysco  
17 representative told him that caged-facility eggs “were no longer available for purchase  
18 through Sysco” in Arizona because “the industry had already reacted to” the Cage-Free  
19 Egg Rule. *Id.* ¶ 106. This hearsay within hearsay is not admissible, and the Department  
20 knows that caged-facility eggs have remained available at Sysco. *Id.* ¶¶ 103, 105, 107.  
21 But even if Sysco did decide to stop selling caged-facility eggs, that would not mean the  
22 cause was the Rule, as opposed to Sysco’s (or another company’s) independent decision.  
23 Moreover, even if Union is someday limited to cage-free eggs, that does not necessarily  
24 mean Union will suffer economic loss. After all, some of Union’s restaurant patrons may  
25 prefer cage-free items and would pay extra for them. *Id.* ¶¶ 126–28, 137.<sup>3</sup>

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27 <sup>3</sup> Neither Mr. Krueger nor Union prefers caged-facility eggs. *Id.* ¶¶ 91, 104. Even if they  
28 did have that preference, the Cage-Free Egg Rule would not prohibit small egg producers  
from selling caged-facility eggs. *Id.* ¶¶ 7, 38–40, 66, 136.

1 In sum, Plaintiffs cannot show the “quantifiable economic harm” they said they  
2 will suffer “as a direct result” of the Cage-Free Egg Rule. Prior Ruling, pg. 2. The Court  
3 should grant summary judgment on Plaintiffs’ APA claims because, it turns out, Plaintiffs  
4 are not meaningfully “affected by” the Rule under A.R.S. § 41-1034(A). *See City of*  
5 *Scottsdale v. McDowell Mountain Irrigation & Drainage Dist.*, 107 Ariz. 117, 120-21  
6 (1971) (individual was not “affected by” a board’s action and lacked standing because his  
7 “hypothesized” “future pecuniary loss” of increased taxes was “speculative and remote”).

8 **C. The Cage-Free Egg Rule complied with the APA.**

9 Even if Plaintiffs had standing, and even if the relevant APA provisions  
10 retroactively apply, the Cage-Free Egg Rule complied with them.

11 **Counts I–II:** Plaintiffs say that the Cage-Free Egg Rule was not “specifically  
12 authorized by statute.” A.R.S. § 41-1030(A). This is incorrect. The Legislature  
13 specifically directed the Department to “adopt rules for poultry husbandry and the  
14 production of eggs sold in this state,” regarding producers with ranches of at least “twenty  
15 thousand egg-laying hens producing eggs.” DSOF ¶¶ 6–7; A.R.S. § 3-710(J). The  
16 Department issued such rules in 2009, with the title “Poultry Husbandry; Standards for  
17 Production of Eggs,” and updated them in 2020. DSOF ¶¶ 17–24.

18 The Cage-Free Egg Rule modified these rules in 2022, *id.* ¶¶ 37–41, 66–67, as  
19 shown in the chart in page 5 above. Even as modified, the rules are “for poultry husbandry  
20 and the production of eggs sold in this state,” A.R.S. § 3-710(J), as they regulate housing  
21 of egg-laying hens with respect to large producers and egg sellers in Arizona.

22 Indeed, legislative materials in 2008 described “poultry husbandry” as “the  
23 practice of breeding and raising poultry for consumption,” such as “facility  
24 recommendations, including spacing of animals,” and specifically listed UEP Guidelines  
25 (which the Department has followed) as an example. DSOF ¶¶ 9–11. For these reasons,  
26 the Rule was specifically authorized by statute, and Counts I and II fail as a matter of law.

27 **Counts III–IV:** Plaintiffs say the Cage-Free Egg Rule was not “reasonably  
28 necessary” for “the purpose of the statute.” A.R.S. § 41-1030(D). This, too, is incorrect.

1 As an initial matter, the Legislature did not just *authorize* the Department to make  
2 rules; it *required* the Department to do so. A.R.S. § 3-710(J) (“shall adopt rules”). The  
3 Legislature also preempted political subdivisions from regulating, which shows that the  
4 goal was to have statewide rules, not a patchwork of local laws. A.R.S. § 3-710(K). That  
5 goal was met, both in 2009 when the Department began issuing such rules and in 2022  
6 when the Department modified them. *See, e.g.*, DSOF ¶ 13 (2008 bill sponsor stating that  
7 it would be “helpful to the industry to have *some* guidelines in place”) (emphasis added).

8 As a matter of law, A.R.S. § 41-1030(D) does not require courts to find more  
9 specific statutory purposes. But here, text, context, and history *do* reveal more specific  
10 purposes: promoting animal welfare, consumer safety, and egg production in Arizona.

11 The twin purposes of animal welfare and consumer safety are components of the  
12 term “poultry husbandry.” A.R.S. § 3-710(J); *see* DSOF ¶¶ 9, 11 (describing “poultry  
13 husbandry” as “the practice of breeding and raising poultry from consumption” and  
14 includes “animal health”). These purposes are also evident in legislative history. *E.g.*,  
15 *id.* ¶ 12 (stating that the Department protects “health” and “quality” of “Arizona’s animals  
16 and animal products”), ¶ 13 (stating that the law would protect “consumers”), ¶ 14 (stating  
17 the law would help “protect[] animals from poor treatment”).

18 The purpose of promoting egg production is evident in the term “production of  
19 eggs sold in this state.” A.R.S. § 3-710(J). It is also in legislative history. *E.g.*, *id.* ¶ 12  
20 (stating that the Department protects “marketability” of Arizona’s “animal products”).

21 The Department has long understood these purposes when issuing rules under  
22 A.R.S. § 3-710(J). For example, in 2009, when the Department began requiring the 2008  
23 UEP Guidelines, it reasoned that the guidelines recognized “growing concern for animal  
24 welfare,” ensured “safe consumption of quality-produced eggs,” and would not  
25 “significantly affect caged-facility egg producers” in Arizona. DSOF ¶¶ 22–23.

26 Similarly, when the Department proposed and adopted the Cage-Free Egg Rule in  
27 2022, it reasoned that the Rule would “ensure the production of high-quality, cruelty-free  
28 eggs” while also giving a major Arizona egg producer “more time” to convert to cage-

1 free than the Initiative would have provided. *Id.* ¶¶ 42–49, 68–70.

2 These rationales were well-supported by evidence available to the Department.  
3 *E.g., id.* ¶¶ 26–36, 54–65. Thus, the Rule was “reasonably necessary” to carry out the  
4 purposes of A.R.S. § 3-710(J), and Counts III and IV fail as a matter of law.

5 **II. The Court should grant summary judgment on the constitutional claim**  
6 **(Count V).**

7 The constitutional claim fails for two independent reasons. First, Plaintiffs lack  
8 standing to assert it. Second, the Legislature’s rulemaking directive to the Department in  
9 2008, when viewed in proper context, was sufficiently clear to guide the Department.

10 **A. Plaintiffs lack standing to assert their constitutional claim.**

11 APA standing only allows a plaintiff to seek a declaration about “the validity of  
12 the rule.” A.R.S. § 41-1034(A). The APA defines “validity” in terms of “substantial  
13 compliance with the procedures required by the APA.” *Samaritan Health Sys. v. Arizona*  
14 *Health Care Cost Containment Sys. Admin.*, 198 Ariz. 533, 537, ¶ 19 (App. 2000) (citing  
15 A.R.S. § 41-1030(A)). Thus, even if Plaintiffs have standing under the APA, that does  
16 not give them standing for their constitutional challenge to a statute.

17 Instead, for Count V, broader standing principles apply. And such principles  
18 foreclose Plaintiffs’ economic theory of injury in at least two ways. First, their theory of  
19 injury is “generalized,” as explained above. *Arcadia Osborn Neighborhood v. Clear*  
20 *Channel Outdoor, LLC*, 256 Ariz. 88, 98, ¶ 11 (App. 2023) (“[g]eneral economic losses”  
21 do not suffice for standing) (cleaned up). Second, their theory of injury improperly relies  
22 on downstream economic effects. *Karbal v. Ariz. Dep’t of Revenue*, 215 Ariz. 114, 117,  
23 ¶ 14 (App. 2007) (explaining that customer who experiences downstream price increase  
24 because of an upstream tax does not have standing to challenge the tax).

25 **B. The Legislature’s directive in A.R.S. § 3-710(J) was sufficiently clear**  
26 **to guide the Department’s rulemaking.**

27 Even if Plaintiffs had standing, their constitutional claim fails as a matter of law.  
28 The Legislature has broad authority to delegate “quasi-legislative” power to an agency,

1 and the standards that accompany the delegation “need not necessarily be set forth in  
2 express terms if they might reasonably be inferred from the statutory scheme.” *State v.*  
3 *Ariz. Mines Supply Co.*, 107 Ariz. 199, 205 (1971). Courts may consider the “purpose  
4 and intent of the statute,” *Ethridge v. Ariz. State Bd. of Nursing*, 165 Ariz. 97, 105 (App.  
5 1989), as well as how terms are “commonly understood” or used in “the context of the  
6 statute,” *3613 Ltd. v. Dep’t of Liquor Licenses & Control*, 194 Ariz. 178, 183 (App. 1999).  
7 And if a statute is ambiguous, courts “adopt the interpretation favoring its validity.” *Lake*  
8 *Havasu City v. Mohave Cnty.*, 138 Ariz. 552, 558 (App. 1983).

9 Here, as explained above, the purposes of A.R.S. § 3-710(J) are to promote animal  
10 welfare and consumer safety (evident by the term “poultry husbandry”) as well as egg  
11 production in Arizona (evident by the term “production of eggs sold in this state”). The  
12 legislative history underlying § 3-710(J) supports this understanding, and the  
13 Department’s consistent application of § 3-710(J) reinforces it.

14 Interpreting Arizona’s Constitution in a way that gives the Legislature flexibility  
15 is especially important in this subject matter, “where the complexities of economic and  
16 governmental conditions have increased.” *Ariz. Mines Supply Co.*, 107 Ariz. at 205.  
17 Indeed, one key benefit of an agency is to “use its own experience, technical competence,  
18 specialized knowledge and judgment in the making of a rule.” A.R.S. § 41-1024(D).

19 Moreover, the Director is especially well equipped for rulemaking in this subject.  
20 By law, the Director must have at least five years of agriculture management experience,  
21 and must report the Department’s activities to the Governor and Legislature each year.  
22 DSOF ¶ 5. The Legislature can modify the Director’s authority if they see a problem  
23 after reading his annual reports. But there is no such problem here. Indeed, in this case,  
24 four legislators submitted a letter to the Director approving his decision to adopt the Cage-  
25 Free Egg Rule under A.R.S. § 3-710(J) and to protect Arizona’s egg supply. *Id.* ¶ 60.

## 26 CONCLUSION

27 The Court should stay proceedings pending completion of the Department’s  
28 related rulemaking, but if not, the Court should grant summary judgment to the defense.

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RESPECTFULLY SUBMITTED this 23rd day of May, 2025.

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