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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. CV2023-018151

**PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

(Assigned to the Honorable
Scott Blaney)

INTRODUCTION

Doubting Arizona voters' qualifications to make a competent decision on a ballot initiative, the Arizona Department of Agriculture ("AZDA") short-circuited the legislative process and upended the state's regulations governing the egg industry. AZDA unilaterally restricted what eggs Arizonans could buy and sell—imposing increased costs on producers and consumers alike—without the necessary authorization from the Legislature.

Under AZDA's Cage-Free Egg Rule ("Rule"), with limited exceptions, all egg-laying hens in Arizona must be housed in a cage-free manner and all eggs sold in the state must come from hens housed the same way. This major policy decision is properly the responsibility of the Legislature to address. Because the Legislature has not set any policy

1 on this economically consequential question, AZDA’s cage-free housing regulation does not
2 satisfy either the statutory requirements for validity or the constitutional minimum for
3 avoiding an impermissible delegation of legislative power. That infringes on the rights of
4 Plaintiffs Union LLC and Grant Krueger, restricting what eggs they can lawfully buy and
5 leaving them to endure the increased egg prices AZDA admits the Rule causes—when this
6 rule cannot lawfully exist in the first place.

7 Plaintiffs move for summary judgment pursuant to Arizona Rule of Civil Procedure
8 56 on all five counts in their complaint. Because A.R.S. Section 3-710(J) does not authorize
9 AZDA’s cage-free egg rule under either the statutory or constitutional standards, Plaintiffs’
10 Motion for Summary Judgment should be granted on all counts.

11 BACKGROUND

12 I. Arizona regulates the production and sale of eggs and egg products.

13 AZDA has various regulatory responsibilities for eggs and egg products. See A.R.S.
14 §§ 3-701–739. In 2008, the Arizona Legislature revised those responsibilities by directing
15 AZDA to “adopt rules for poultry husbandry and the production of eggs sold in [Arizona].”
16 A.R.S. § 3-710(J). The statute exempts from such rules any egg producers that have “fewer
17 than twenty thousand egg-laying hens producing eggs.” *Id.* Prior to 2022, AZDA never
18 required eggs produced or sold in Arizona to be cage-free.

19 In 2022, interest groups filed a ballot initiative that would have required eggs
20 produced or sold in Arizona after May 1, 2023 to be cage-free. Plaintiffs’ Statement of Facts
21 in Support of Motion for Summary Judgment (“PSOF”) ¶ 1. AZDA was concerned that
22 “[t]he ballot initiative had a very aggressive time frame,” which would have been
23 disadvantageous to large Arizona egg producers—particularly Hickman’s, which told
24 AZDA that the initiative would force it “to kill millions of chickens.” PSOF ¶¶ 2, 3.

25 AZDA “believed that Arizona voters were not adequately informed about what the
26 industry needed,” and that “you would have to train everybody in agricultur[al] commerce
27 in order to understand all the aspects of ... the ballot initiative.” PSOF ¶¶ 4, 5. Moreover,
28 even if voters had full information, and despite the prediction that Hickman’s would have

1 “spen[t] millions in advertising ... efforts to oppose the initiative,” AZDA anticipated that
2 Arizonans would have “voted ... very emotionally,” and it was “almost certain” that “the
3 ballot initiative would have passed no matter how much education would be done.”¹ PSOF
4 ¶¶ 5–7.

5 In January 2022, AZDA proposed and, in April 2022 it finalized, a new rule for
6 “poultry husbandry” and egg production—the regulation at issue in this case (the “Rule”).
7 PSOF ¶¶ 16–17. AZDA enacted the Rule because it concluded that the anticipated “benefits
8 to public and animal welfare[] outweigh the potential economic costs.” PSOF ¶ 24. It has
9 also stated that it enacted the Rule “to prevent [the ballot initiative] from passing,” for the
10 reasons described above. PSOF ¶ 25.

11 The Rule differed from the ballot initiative in several respects, including “a phased
12 timeline” for implementation of cage-free standards rather than the more aggressive
13 timeline the ballot initiative (if passed) would have imposed. PSOF ¶ 18. The Rule required
14 that as of October 1, 2022, all egg-laying hens in Arizona must be housed “with no less than
15 one square foot of usable floor space per egg-laying hen” and all eggs and egg products sold
16 in Arizona must come from hens housed in the same manner. PSOF ¶ 19. Additionally, by
17 January 1, 2025, all egg-laying hens in Arizona must be “housed in a cage-free manner”
18 with the amount of floor space provided for in guidelines from the United Egg Producers
19 (“UEP”) and all eggs and egg products sold in Arizona must come from hens housed in the
20 same way. PSOF ¶¶ 20–21. Eggs and egg products must be certified as complying with the
21 Rule, and out-of-state producers must provide for government or third-party certification to
22 sell eggs and egg products in Arizona. PSOF ¶ 22. The Rule exempts egg producers with
23 fewer than 20,000 egg-laying hens. PSOF ¶ 23.

24 Despite the timeline laid out in the Rule, however, AZDA recently postponed full
25 implementation until 2027 because an ongoing “egg shortage” was “creat[ing] astronomical
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27 ¹ In assessing the likelihood the ballot initiative would pass, AZDA relied on polling by
28 the Humane Society of the United States, one of the initiative’s proponents. AZDA did
not consider any other polling, conduct surveys of its own, or commission any report or
study to aid in this determination. PSOF ¶¶ 8–10.

1 egg prices.” PSOF ¶ 26. Since then, Governor Katie Hobbs has ordered AZDA to *further*
2 delay full implementation until 2034, “in response to rising egg prices.” PSOF ¶ 27. AZDA
3 predicts that suspending the Rule will allow “[m]ore egg producer[s] [to] qualify to ship
4 eggs and sell eggs into Arizona” and thus “[d]ecrease prices by increasing availability.”
5 PSOF ¶ 28.

6 **II. Plaintiffs are injured by the cage free egg rule.**

7 It is undisputed that the Rule increases the cost of eggs. PSOF ¶¶ 30–40, 46. AZDA
8 estimated in its Notice of Final Rulemaking that the move to cage-free egg production
9 would increase the wholesale cost of eggs by 39 cents per dozen—an increase that would
10 be passed on to retailers and ultimately to consumers. PSOF ¶¶ 31–32. It also recognized
11 that the Rule would impose “hundreds of millions of dollars” of capital costs on one
12 producer to convert to cage-free egg production. PSOF ¶ 33. Production costs would also
13 increase, including up to a 41% increase in labor input costs. PSOF ¶ 34. AZDA projects
14 the Rule will increase yearly egg costs for each consumer by \$2.71 to \$8.79 based on an
15 increased cost of cage-free eggs (1 to 3.25 cents per egg). PSOF ¶¶ 35–36; *see also, e.g.*,
16 PSOF ¶ 30 (“As mentioned in multiple documents and the notice of intended rulemaking,
17 the Department recognizes the cost of eggs will increase slightly because of the rule.”).

18 AZDA also anticipates a reduction in consumer surplus of \$4.81 to \$11.05 per
19 household. PSOF ¶ 37. Likewise, as Defendants’ own expert witness recognized, “everyone
20 accepts that there’s additional costs associated with cage-free production,” and that
21 producers “will be able to pass on most of their increased costs, if not entirely,” to
22 consumers. PSOF ¶ 40.

23 AZDA has suggested that the exemption for egg ranches with less than 20,000 egg-
24 laying hens may limit the impact of the cage free egg rule on small egg ranchers without
25 addressing any consumer impact. *See* PSOF ¶ 38. The exemption does not negate the Rule’s
26 economic impact, however, because small producers make up a minimal share of the supply
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1 of eggs generally available to Arizona consumers,² and many small producers already
2 follow cage-free practices and already have higher marginal costs than large producers.
3 PSOF ¶¶ 41–46.

4 Plaintiff Union LLC is a restaurant group based in Tucson, operating three
5 restaurants and employing approximately 225 people. PSOF ¶¶ 47–48, 50. Union purchases
6 significant quantities of eggs for its menu items, particularly for its brunch service. PSOF
7 ¶¶ 51–53. From November 2022 through October 2023, Union purchased 578 cases
8 (104,040 eggs) for its restaurants. PSOF ¶ 52. Union has also purchased egg products as a
9 substitute for eggs. PSOF ¶ 54. When buying eggs, Union does not specifically seek out
10 eggs produced in a cage-free manner. PSOF ¶ 55. AZDA’s anticipated price increase from
11 the Rule will injure Union through increased egg and egg product costs. PSOF ¶ 57. The
12 Rule will also restrict Union from buying non-cage free eggs and egg products originating
13 from large producers it would otherwise buy. PSOF ¶ 56.

14 Restaurateur Grant Krueger, another Plaintiff in this case, manages Union. PSOF
15 ¶ 49, 59. Mr. Krueger also buys eggs for his own personal consumption and does not
16 specifically seek out cage-free eggs when he does so. PSOF ¶ 60. Like Union, the
17 anticipated price increases from the Rule will negatively affect Mr. Krueger’s personal
18 finances and will restrict what eggs he can buy, and from whom, for his personal
19 consumption. PSOF ¶¶ 61–62.

20 LEGAL STANDARDS

21 A motion for summary judgment “shall” be granted “if the moving party shows that
22 there is no genuine dispute as to any material fact and the moving party is entitled to
23 judgement as a matter of law.” Ariz. R. Civ. P. 56(a).

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27 ² Many of the small producers the exemption covers keep only “a handful of chickens,”
28 for example, individuals who raise chickens in their backyard for personal egg
consumption; these eggs are not commercially available to Plaintiffs or other Arizona
consumers. PSOF ¶¶ 42–44.

ARGUMENT

I. Plaintiffs have standing.

Plaintiffs have clear statutory standing to challenge the Rule under A.R.S. Section 41-1034(A), which authorizes “[a]ny person who is or may be affected by a rule” to challenge the rule’s validity. A.R.S. § 41-1030(A) (emphasis added). Plaintiffs, as a consumer and restaurant owner, are plainly affected by a regulation that restricts what eggs they may lawfully purchase and increases the cost of those eggs.³

Plaintiffs also have constitutional standing. “A party has standing to sue in Arizona if, under all circumstances, the party possesses an interest in the outcome of the litigation.” *Strawberry Water Co. v. Paulsen*, 220 Ariz. 401, 406 ¶ 8 (App. 2008) (citation omitted).

Plaintiffs have an interest in the outcome of this challenge to the Rule’s validity because the Rule injures them in two ways: first, it deprives them of the right to buy eggs and egg products from whatever producers they choose. *See* PSOF ¶¶ 56, 61 (“Cage-free products are absolutely objectively different product than conventional eggs.”). Courts have consistently held that buyers and sellers alike suffer a direct injury from laws restricting the sale or purchase of a product, and that they therefore have standing to challenge such laws. *See, e.g., Freeman v. Corzine*, 629 F.3d 146, 154–55 (3d Cir. 2010); *Farm-to-Consumer Legal Def. Fund v. Sebelius*, 734 F. Supp. 2d 668, 675, 687 (N.D. Iowa 2010).

Second, the Rule imposes substantial economic injuries on Plaintiffs by subjecting them to increased egg costs. This harms Plaintiff Krueger, who buys eggs for his own personal consumption and will be forced to spend more as a result of the Rule. It also harms Plaintiff Union LLC, which purchases over 100,000 eggs per year for its restaurants and so will suffer a particularized harm “more substantial than that suffered by

³ AZDA has repeatedly indicated that the Rule requires retailers, including restaurants, to “verify with [their] egg suppliers that they are licensed [as complying with the Rule] and are reporting the egg sales to the Department.” *See* PSOF ¶ 58.

1 the community at large.” *Center Bay Gardens, LLC v. City of Tempe City Council*, 214
2 Ariz. 353, 379–80 ¶ 20 (App. 2007).

3 **II. The Rule is not specifically authorized by statute.**

4 In 2022, the Legislature amended the APA to prohibit any agency from “[m]ak[ing]
5 a rule that is not specifically authorized by statute.” A.R.S. § 41-1030(D)(3). This
6 amendment was not meaningless or “superfluous.” *In re: Nicaise v. Sundaram*, 245 Ariz.
7 566, 568 ¶ 11 (2019). Rather, it substantially restricted agencies’ regulatory authority and
8 provided courts with new standards to apply when evaluating a regulation’s validity. The
9 phrase “specifically authorized” in Section 41-1030(D)(3) shows that the Legislature chose,
10 in adopting the statute, to hold agencies *more* accountable than the pre-existing
11 constitutional mandate. The word “specifically” means “[i]n a specific manner; explicitly,
12 particularly, definitely.” Black’s Law Dictionary 1571 (4th ed. 1968).⁴

13 At a constitutional minimum, the Department’s promulgation of the Rule must be
14 adequately tied to the “fixed primary standards” and “policies” established in a statute.
15 *DeHart v. Cotts*, 99 Ariz. 350, 351 (1965). But the Rule fails this test. *See infra* § IV.
16 Accordingly, it certainly cannot survive a statute requiring “specifically authorized”
17 regulations.

18 There are no standards at all in Section 3-710(J) by which AZDA can develop
19 regulations. The statute simply authorizes AZDA to make regulations on the subjects of
20 “poultry husbandry” and the “production of eggs sold in this state.” A.R.S. § 3-710(J). But
21 the terms “poultry husbandry” and “production of eggs sold in this state,” A.R.S. § 3-710(J),
22 are concepts devoid of any meaningful instructions to the Department, and they certainly
23 do not specifically authorize the Department to regulate hen housing.

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26 ⁴ *Cf. Golden Star Wholesale, Inc. v. ZB Importing, Inc.*, 531 F. Supp.3d 1231, 1253 (E.D.
27 Mich. 2021) (“‘Specifically authorized’ means that the general transaction is ‘explicitly
28 sanctioned.’” (citation omitted)); *AFSCME v. Grand Rapids Pub. Utilities Comm’n*, 645
N.W.2d 470, 474 (Minn. App. 2002) (“[T]he term ‘specifically authorizes’ equates with
‘specifically permits’ or ‘specifically allows.’”).

1 “Poultry husbandry” is simply a broad category of conduct to be regulated. The two
2 relevant dictionary definitions of the word “husbandry” are: (1) “the cultivation or
3 production of plants or animals”; and (2) “the scientific control and management of a branch
4 of farming and especially of domestic animals.”⁵ Neither of these definitions provides any
5 context for how poultry or eggs are to be “cultivat[ed] or produc[ed]” that could guide
6 AZDA’s development of poultry husbandry regulations. The statute also does not provide
7 its own definition of “poultry husbandry” that might specifically authorize the Rule. *See*
8 A.R.S. § 3-701. The phrase “production of eggs sold in this state” is similarly devoid of any
9 legislative standard, let alone specific authorization to regulate hen housing. A.R.S. § 3-
10 710(J).

11 Indeed, by Defendants’ own characterization, Section 3-710(J) is simply a broad
12 charge for the Department to regulate an entire industry: its “purpose ... is to require and
13 authorize the Department to make rules regarding poultry husbandry and the production of
14 eggs in Arizona.” PSOF ¶ 11. This is no more than an enabling act authorizing AZDA to
15 “pass the law it thinks appropriate,” and it falls short of Section 41-1030(D)(3)’s
16 “specifically authorized” requirement. *State v. Marana Plantations, Inc.*, 75 Ariz. 111, 114
17 (1953).

18 Agencies have *never* been allowed to enact rules without more specific legislative
19 standards than are provided in Section 3-710(J). *See Marana Plantations, Inc.*, 75 Ariz. at
20 114. And the Legislature went beyond that baseline requirement when it enacted Section
21 41-1030(D)(3), requiring agencies to ground their rules not in sweeping delegations of
22 power, but in concrete and definite language providing a standard to regulate a specific
23 issue.

24 It is insufficient under Section 41-1030(D)(3) to say, as Defendants do, that Section
25 3-710(J) specifically authorizes the Rule simply because the Rule “is a rule for ‘poultry
26 husbandry.’” MTD at 12. Indeed, it cannot be because such an approach is not even
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28 ⁵ *Husbandry*, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/husbandry>.

1 constitutional—let alone compliant with the higher bar the Legislature set with Section 41-
2 1030(D)(3). *See infra* § IV.

3 Moreover, “authorized” is not the same thing as “*specifically* authorized.” By
4 treating Section 3-710(J)’s broad instruction to “adopt rules for poultry husbandry and the
5 production of eggs sold in this state” as satisfying A.R.S. § 41-1030(D)(3), Defendants read
6 the word “specifically” out of the statute. *See Ariz. St. Univ. Bd. of Regents v. Ariz. St. Ret.*
7 *Sys.*, 242 Ariz. 387, 389 ¶ 7 (App. 2017) (explaining that courts must “give meaning to each
8 word, phrase, clause, and sentence” (citation & quotations omitted)); *see* A.R.S. § 41-1030
9 (using “specifically” five times).

10 A comparison to other authorizing statutes also highlights the failure of Section 3-
11 710(J) to specifically authorize the Rule. For example, Section 41-1822(A)(3) provides
12 much more specific regulatory authorization than Section 3-710(J). The statute requires the
13 Peace Officer Standards and Training Board to establish “minimum qualifications” for
14 peace officers that “shall relate to [their] physical, mental and moral fitness.” A.R.S. § 41-
15 1822(A)(3). This statutory language is sufficiently specific to authorize a rule on drug use
16 for peace officers, *see* A.A.C. § R13-4-105, and it is much more specific than Section 3-
17 710(J)’s phrase, “adopt rules for poultry husbandry and the production of eggs sold in this
18 state.”

19 While the authorizing statute speaks only in the broadest generalities, Defendants try
20 to import the necessary specificity by arguing that “legislative history show[s] that the
21 legislature intended to rely (and for the Department to rely) on how” the terms “poultry
22 husbandry” and “production of eggs” are “understood by industry participants.” PSOF ¶ 12.
23 But legislative history “cannot supersede the unambiguous words in [this] statute.”
24 *Qasimyar v. Maricopa Cnty.*, 250 Ariz. 580, 590 ¶ 33 (App. 2021); *see also Roberts v. State*,
25 253 Ariz. 259, 266 ¶ 20 (2022). Section 3-710(J) may be unconstitutionally broad, *see infra*
26 § IV, but it is not ambiguous. When specific authorization is lacking on the face of a statute,
27 the agency cannot cobble such authority together from legislative fact sheets or speculation
28 about legislators’ intent. *See id.*

1 What’s more, even if the Legislature *had* meant Section 3-710(J) to incorporate the
2 alleged understanding of “industry participants,” that would raise other problems.
3 Defendants have not identified any method for determining how statutory terms are
4 “understood by industry participants,” or shown that any consensus exists among “industry
5 participants” as to those terms’ meaning. Defendants also admit that there are “*changing*
6 industry practices” when it comes to “poultry husbandry standards.”⁶ PSOF ¶ 13 (emphasis
7 added). An enabling statute cannot be a moving target. “That is the whole point of having
8 written statutes; ‘every statute’s meaning is fixed at the time of enactment.’” *Loper Bright*
9 *Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (citation omitted); *see also Kriz v. Buckeye*
10 *Petroleum Co.*, 145 Ariz. 374, 377 (1985) (“The cardinal rule of statutory construction is to
11 ascertain the meaning of a statute and the intent of the legislature at the time the legislature
12 acted.”). And even if the Legislature *had* intended to incorporate the standards of industry
13 participants, that would arguably be an unconstitutional delegation of legislative power to
14 a private entity. *Cf. Indus. Comm’n v. C & D Pipeline, Inc.*, 125 Ariz. 64, 66–67 (App.
15 1979). This Court should, of course, interpret statutes to avoid constitutional problems like
16 that. *See Hayes v. Cont’l Ins. Co.*, 178 Ariz. 264, 273 (1994).

17 The Department has precisely the authority the Legislature gave it when it enacted
18 the relevant statute, and that scope of authority changes only when the Legislature amends
19 the statute—it does not evolve with the Department’s own views of a constantly-changing
20 industry consensus. Section 3-710(J) means just what it says, and it is insufficient to justify
21 the Rule.

22 **III. The Rule is not reasonably necessary to carry out the purpose of Section 3-** 23 **710(J).**

24 The Legislature added a second requirement in 2022: a regulation must be
25 “reasonably necessary to carry out the purpose of the statute.” A.R.S. § 41-1030(A). This
26 requirement is not satisfied automatically by the mere existence of an authorizing statute.

27 ⁶ Indeed, the idea of evolving industry standards is key to Defendants’ rationale for the
28 Rule. *See, e.g.*, PSOF ¶ 14 (“Markets had been trending toward cage-free practices for
years before the rulemaking.”).

1 There must be some statutory standard by which a regulation’s reasonable necessity can be
2 judged. Again, statutes must provide “fixed primary standards” as the constitutional
3 minimum. *DeHart*, 99 Ariz. at 351. Because there is no standard in Section 3-710, *see supra*
4 § II, there is no way to determine if the Rule is “reasonably necessary to carry out [its]
5 purpose,” A.R.S. § 41-1030(A). If all it took to satisfy the reasonable necessity requirement
6 was for the Legislature to identify a general topic for regulation, then the requirement would
7 be meaningless, and Section 41-1030(A) superfluous.

8 The Department illustrated that the Rule wasn’t necessary to carry out a statutory
9 purpose when they suspended it in light of “astronomical egg prices,” so that “[m]ore egg
10 producer[s] [would] qualify to ship eggs and sell eggs into Arizona” and thus “[d]ecrease
11 prices by increasing availability.” PSOF ¶¶ 26–27; *see also* PSOF ¶ 28 (describing the
12 Rule’s “flexibility [to] postpone things very easily without having to go through extensive
13 legislative ... procedures”). Shortly afterward, Governor Hobbs ordered the Department to
14 further delay parts of the Rule until 2034 to “allow Arizona egg producers to focus on
15 increasing production and lowering the cost of eggs in Arizona grocery stores.” PSOF ¶ 27.
16 Defendants’ choice to delay the Rule’s implementation for a decade in light of other policy
17 concerns demonstrates that the Rule isn’t necessary to carry out a statutory purpose. Rather,
18 the Rule represents one potential policy choice among many—one that was not “necessary”
19 for the Department to make.

20 **IV. Section 3-710 unconstitutionally delegates legislative authority to AZDA.**

21 Among the three departments of the Arizona government, the Arizona Constitution
22 reserves the legislative power exclusively for the Arizona Legislature. Ariz. Const. art. IV,
23 pt. 1 § 1. The executive and judicial departments are expressly prohibited from exercising
24 the legislative power. *Id.* art. III. As a result, the Arizona Legislature cannot delegate the
25 “power to make the law” to another department. *Roberts*, 253 Ariz. at 268 ¶ 29 (citation
26 omitted).

1 **A. The Legislature must make major policy decisions and provide fixed**
2 **primary standards to regulators.**

3 To avoid an unconstitutional delegation of legislative power and thereby empower
4 “administrative bodies ... to prescribe rules and regulations,” the Legislature must at least
5 “declare[] policies” through “fixed primary standards.” *DeHart*, 99 Ariz. at 351. The
6 “standards, limitations, and policies” enacted by the Legislature establish the “boundaries”
7 within which an administrative agency “may ... act.” *Hernandez v. Frohmler*, 68 Ariz.
8 242, 255 (1949). Those boundaries are only effective if they are judicially administrable,
9 *Tillotson v. Frohmler*, 34 Ariz. 394, 403 (1928), and “enable every person, by reading the
10 law, to know what his rights and obligations are,” *State v. Birmingham*, 95 Ariz. 310, 312–
11 13 (1964). The standards must also be sufficient to decide the “major policy question[s]”
12 raised by the statute. *Roberts*, 253 Ariz. at 270 ¶ 40.

13 The Legislature’s authorization for AZDA to create rules for “poultry husbandry”
14 and the “production of eggs sold in this state” is an invalid delegation of legislative power
15 to AZDA. A.R.S. § 3-710; *see DeHart*, 99 Ariz. 351–52. Section 3-710(J) fails to provide
16 any standard for the promulgation of such rules.⁷ *See supra* § II. And even if the statute
17 could be read to provide *some* standard, no major policy questions relevant to poultry
18 husbandry have been resolved in the statute. *See Roberts*, 253 Ariz. at 270 ¶ 40.

19 **B. Section 3-710 provides no fixed primary standards.**

20 Section 3-710(J) is an entirely standardless delegation of legislative power to AZDA.
21 *See Hernandez*, 68 Ariz. at 256. On its face, it permits AZDA to adopt any poultry
22 husbandry and egg production rule it desires. A.R.S. § 3-710(J). “Poultry husbandry” is just
23 a subject of regulation that does not inherently provide any standards, nor is the term defined

24
25 ⁷ The only conceivable limitations, in fact, are the “specifically authorized” and “reasonably
26 necessary” requirements the Legislature added to the APA in 2022. A.R.S. § 41-1030(A)
27 and (D)(3). Those provisions offer no insights into how AZDA *should* regulate, but they
28 make clear that AZDA should *not* enact rules such as the Rule at issue—and thus, faithfully
applying Section 41-1030 would allow the Court to avoid reaching the constitutional issues
briefed here. *See Hayes*, 178 Ariz. at 273 (“[I]f possible we construe statutes to avoid
unnecessary resolution of constitutional issues.”).

1 in the statute. *See supra* § II. The phrase “production of eggs sold in this state” provides
2 even less direction. A.R.S. § 3-710(J).

3 The statutory phrases at issue are mere categories, not standards. They provide
4 neither a goal for the regulation of poultry husbandry and egg production, nor a means to
5 attain such a goal. *See DeHart*, 99 Ariz. at 351. Poultry husbandry could be regulated to
6 achieve (among other things) high production levels, healthy hens, or quality eggs. The
7 statute should have provided criteria or other guidance for AZDA to balance competing
8 goals. *See, e.g., State v. Wacker*, 86 Ariz. 247, 249–50 (1959). For example, in *Wacker*, a
9 statute authorized “necessary” regulations for controlling “crop pest or disease” that
10 “menaces or threatens serious injury to” agriculture. *Id.* This language gave at least some
11 guidance as to when, how, and for what purpose the agency should regulate. Here, in
12 contrast, goals, objectives, and criteria are simply missing. *See supra* § II.

13 The lack of standards is especially problematic because, as Defendants admit, the
14 Department’s regulations necessarily implicate competing values. AZDA “attempt[s] to
15 balance the respective interests of producers, consumers, and animals” when regulating egg
16 production and poultry husbandry. PSOF ¶ 15; *see also id.* (“The Department tries to
17 balance public health, animal welfare, and egg supply, and they consider ... many things
18 ... during the rulemaking process.”). When regulations affect such a broad array of
19 competing values and interest groups, it’s the province of the Legislature to provide
20 instructions on what fundamental values or policy goals should guide the Department’s
21 regulations. An agency “must be corralled in some reasonable degree and must not be
22 permitted to range at large and determine for itself the conditions under which a law should
23 exist and pass the law it thinks appropriate.” *3613 Ltd. v. Dep’t of Liquor Licenses &*
24 *Control*, 194 Ariz. 178, 183 ¶ 19 (App. 1999) (citation omitted).⁸

25
26 ⁸ Again, Defendants’ recent choice to delay the Rule’s implementation for a decade,
27 because of countervailing policy concerns, illustrates this principle. While Defendants
28 acknowledge that the Rule implicates conflicting interests (egg prices on one hand, animal
welfare and the Rule’s other purported benefits on the other hand), statute gives no
guidance on how (or even whether) to balance these interests.

1 To appreciate the lack of limitations or guidance in section 3-710(J) and the
2 enormous rulemaking authority that would allow, consider an example of a categorical
3 rulemaking authorization in another context. Suppose the Legislature authorized a state
4 agency to adopt rules “for child upbringing.” That would leave open many policy questions:
5 whether the agency could issue rules about feeding, washing, clothing, and educating
6 children, and what goals are to be met through the regulations. That would be a wholesale,
7 standardless delegation of legislative authority to an administrative agency—and plainly
8 unconstitutional. The same is true in section 3-710(J) with respect to poultry husbandry.
9 Such broad subject-matter delegation without any limiting principle is unconstitutional
10 because it gives the agency a blank check to “discover what it might think are evil conditions
11 and proceed to adopt whatever remedial legislation might suit its fancy.” *Marana*
12 *Plantations*, 75 Ariz. at 115.

13 Statutes similar to an authorization to “adopt rules for poultry husbandry and the
14 production of eggs sold in this state,” A.R.S. § 3-710(J), have been struck down as
15 unconstitutional delegations of legislative power. In *Hernandez*, the Civil Service Board
16 was authorized to ““regulate all conditions of employment in the state civil service.”” 68
17 Ariz. at 254. The statute was unconstitutional because it established “no standards or
18 boundaries within which it must exercise its discretion.” *Id.* at 256, 259. Similarly, a statute
19 authorizing a state board to “regulate sanitation and sanitary practices in the interests of
20 public health” and to “protect and promote the public health and prevent disability and
21 mortality” unconstitutionally “permit[ted] the board to wander with no guide nor criterion.”
22 *Marana Plantations*, 75 Ariz. at 114.

23 Defendants have previously argued that identifying subjects of regulation is all that
24 is required to satisfy the non-delegation doctrine. *See* State’s Resp. to Mot. for Summ. J.
25 (“MSJ Resp.”) at 10. But that is not the case. Identifying only the subject matter to be
26 regulated fails to achieve the crucial legislative function of allowing regulated parties to
27 “know what [their] rights and obligations are and how the law will operate when put into
28 execution.” *Birmingham*, 95 Ariz. at 312–13 (citation omitted). This requires the law to lay

1 out a set of standards for the executive branch to follow when crafting implementing
2 regulations. *See DeHart*, 99 Ariz. at 351. Without these standards, regulated parties simply
3 know that they are subject to regulation, but they have no idea what will be expected of
4 them or how to comply.

5 Moreover, Defendants have admitted that “goals” that “guide the Department’s
6 rulemaking” are “not expressly listed in § 3-710(J).” MSJ Resp. at 10; *see also* PSOF ¶ 15
7 (listing factors, none of which appears in statute, the “Department tries to balance ... during
8 the rulemaking process”). That admission is fatal to the Defendants’ non-delegation-
9 doctrine argument. Courts do “not read into a statute something which” it does not contain.
10 *Roberts*, 253 Ariz. at 266 ¶ 20 (citation omitted).

11 Nevertheless, AZDA determined in the Rule that the “benefits to public and animal
12 welfare, outweigh the potential economic costs.” PSOF ¶ 24. This balancing was all
13 AZDA’s own because there are no “fixed primary standards” in Section 3-710(J). *DeHart*,
14 99 Ariz. at 351. AZDA, in finding a problem on its own initiative (if caged egg production
15 even is a problem) and formulating its own solution, functioned as just the kind of general
16 board of inquiry that the Arizona Constitution does not permit. *Marana Plantations*, 75
17 Ariz. at 114.

18 **C. If Section 3-710(J) provides a standard, it is constitutionally insufficient.**

19 Even if Section 3-710(J) provides a standard, it is not sufficient to avoid
20 unconstitutionally delegating legislative power. *See DeHart*, 99 Ariz. at 351; *Roberts*, 253
21 Ariz. at 270 ¶ 40. The Arizona Legislature must—at a minimum—resolve “major policy
22 question[s].” *Roberts*, 253 Ariz. at 270 ¶ 40. The phrase “poultry husbandry and the
23 production of eggs sold in this state” leaves unresolved several major policy questions
24 regarding the regulation of those subjects. A.R.S. § 3-710(J).

25 One such major policy question is the housing requirements for egg-laying hens. The
26 Arizona Supreme Court recently explained that the question of “whether time spent on
27 certain activities is compensable—is the very definition of the type of major policy question
28 that the legislature alone may determine.” *Roberts*, 253 Ariz. at 270 ¶ 40. How egg-laying

1 hens are housed is of analogous significance and itself a major policy question. *Id.* The
2 Department has acknowledged that the Rule (and the ballot initiative the Rule was meant
3 to prevent) has a vast impact: it affects “most people in Arizona who purchase eggs,” as
4 well as “millions of chickens,” PSOF ¶ 29. So, this question must be decided by the
5 legislature “alone.” *Roberts*, 253 Ariz. at 270 ¶ 40.

6 The Illinois Supreme Court has offered a helpful standard for avoiding an
7 unconstitutional delegation. A statute must identify: “(1) the persons and activities
8 potentially subject to regulation; (2) the harm sought to be prevented; and (3) the general
9 means intended to be available to the administrator to prevent the identified harm.” *Stofer*
10 *v. Motor Vehicle Cas. Co.*, 369 N.E.2d 875, 879 (Ill. 1977). Section 3-710(J) fails all three
11 factors: (1) the phrases “poultry husbandry” and “production of eggs” are too broad to put
12 industry participants on notice of the specific actions to be regulated; (2) the statute does
13 not identify any harm to be remedied through “poultry husbandry” or egg production
14 regulation; and (3) the open-ended regulatory authorization does not sufficiently identify
15 the means by which these subjects are to be regulated. To the extent this test reflects a
16 stricter standard than currently applicable, Arizona should adopt this test. Plaintiffs
17 expressly preserve this issue for appeal.

18 CONCLUSION

19 For the foregoing reasons, Plaintiffs request that the Court grant Plaintiffs’ Motion
20 for Summary Judgment.

21 **RESPECTFULLY SUBMITTED** this 23rd day of May 2025.

23 GOLDWATER INSTITUTE

24 /s/ John Thorpe

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CERTIFICATE OF SERVICE

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