Clerk of the Superior Court
*** Electronically Filed ***
11/02/2026 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2023-018151 10/29/2026

HONORABLE SCOTT A. BLANEY

CLERK OF THE COURT
N. Howard
Deputy

UNION L L C, et al.

v.

ARIZONA DEPARTMENT OF AGRIGULTURE, et al.

JONATHAN RICHES

ARIZONA DEPARTMENT OF AGRIGULTURE
1110 W WASHINGTON ST # 450
PHOENIX AZ 85003

LUCI D DAVIS
DEANIE J REH
JUDGE BLANEY

**UNDER ADVISEMENT RULING**

The Court has reviewed and considered Plaintiff Union Hospitality Group's *Revised Motion for Summary Judgment* and Defendants State of Arizona and Paul E. Brierley's *Replacement Motion for Summary Judgment*, as well as the parties' related filings and the arguments received at the September 1, 2026 oral argument.

This special action arises from a rule promulgated by the Arizona Department of Agriculture ("AZDA") that requires, with limited exceptions, that all egg-laying hens in Arizona must be housed in a cage-free manner and further, that all eggs sold in the state must come from hens housed the same way. Plaintiffs, who are restaurant owners and commercial consumers of large amounts of eggs, argue that they are injured by the new rule because of expected cost increases and the rule's prohibition on Plaintiffs' purchase of non-cage-free eggs. Plaintiffs further argue that AZDA exceeded the authority granted to it by the legislature and that the legislature unconstitutionally delegated legislative authority to AZDA. Plaintiffs seek declaratory and injunctive relief.

Both parties move for Summary Judgment.

Summary Judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *See* Rule 56(a), *Arizona Rules of Civil Procedure*; *Orme School v. Reeves*, 166 Ariz. 301, 305 (1990); *Hourani v. Benson Hosp.*, 211 Ariz. 427, 432 (App. 2005). All facts must be viewed in the light most favorable to the nonmoving party. *See Grain Dealers Mutual Insurance Co. v. James*, 118 Ariz. 116 (1978); *Farmers Ins. Co. v. Vagnozzi*, 138 Ariz. 443, 448 (1983). "Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts" are not proper on summary judgment. *Orme School*, 166 Ariz. at 309-10 (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 255, 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986)). But the Court will not deny a motion for summary judgment on the speculation "that some slight doubt …, some scintilla of evidence, or some dispute over irrelevant or immaterial facts might blossom into a real controversy in the midst of trial." *Orme School*, 166 Ariz. at 311.

When a Plaintiff moves for Summary Judgment, the question before the Court is not whether the Defendant has succeeded in presenting genuine disputes of material fact. Rather, the question is whether the plaintiff has "presented sufficient undisputed admissible evidence to establish its entitlement to judgment." *Wells Fargo Bank, N.A. v. Allen*, 231 Ariz. 209, 213 (App. 2012). The plaintiff carries the burden of persuasion on its Motion For Summary Judgment if they submit "undisputed admissible evidence that would compel any reasonable juror to find in its favor on every element of its claim." *Id.* (quoting *Comerica Bank v. Mahmoodi*, 224 Ariz. 289, 293 (App. 2010)).

**THE COURT FINDS AS FOLLOWS**:

1. On January 7, 2022, the Arizona Secretary of State published a notice of proposed rulemaking amending the existing poultry husbandry regulations to require egg-laying hens to be housed in a cage-free manner and all eggs sold in the state come from egg-laying hens housed in a cage-free manner subject to the statutory exception for egg ranches with fewer than 20,000 egg-laying hens.

2. On April 22, 2022, the Arizona Secretary of State published the notice of final rulemaking amending the existing poultry husbandry regulations to require egg-laying hens be housed in a cage-free manner and all eggs sold in the state come from egg-laying hens housed in a cage-free manner subject to the statutory exception for egg ranches with fewer than 20,000 egg-laying hens (the "Cage-Free Egg Rule").

3. The Cage-Free Egg Rule required, *inter alia*, that from October 1, 2022, all egg-laying hens in Arizona be housed and all eggs and egg products sold in Arizona come from egg-laying hens housed "with no less than one square foot of useable floor space per egg-laying hen."

4. As of January 1, 2025, all egg-laying hens in Arizona were required to be—and all eggs and egg products sold in Arizona were required to come from egg-laying hens—"housed in a cage free manner."

5. To be housed in a cage-free manner pursuant to the Cage-Free Egg Rule, egg-laying hens must have "the amount of usable floor space per egg-laying hen equal to or greater than that required by the 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage Free Housing" and be in an environment that meets the following three criteria: (1) "unrestricted freedom to roam"; (2) "an environment that allows them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and" (3) "an environment in which farm employees can provide care while standing within the hens' useable floor space."

6. Eggs and egg products sold in Arizona must be certified as complying with the Cage-Free Egg Rule, with out-of-state producers able to rely on a "government or private third-party inspection and continuous process verification service" to provide the necessary certification.

7. In accordance with A.R.S. § 3-710(J), egg ranches with fewer than 20,000 egg-laying hens producing eggs are exempt from the Cage-Free Egg Rule.

8. One of the reasons AZDA enacted the Rule is that it concluded that the anticipated "benefits to public and animal welfare outweigh the potential economic costs."

9. The Department recently suspended full implementation of the Rule until 2027 "in light of bird flu" and the recent "egg shortage, which created astronomical egg prices."

10. In March 2025, Governor Katie Hobbs ordered AZDA to delay full implementation of the Rule further, until 2034, in response to rising egg prices and to allow Arizona egg

producers to focus on increasing production and lowering the cost of eggs in Arizona grocery stores.

11. AZDA predicts that postponing the Rule will "help reduce egg prices" because it will allow "more egg producers to qualify to ship and sell eggs into Arizona," and thus "decrease prices by increasing availability."

12. Cage-free requirements as contemplated by the Rule affect most people in Arizona who purchase eggs, as well as millions of chickens.
13. Holding all other factors constant, imposing cage-free requirements on egg producers increases the price of eggs for consumers and retailers.

14. AZDA stated in the Notice of Final Rulemaking that "experts forecast that the cage free conversion will result in a long-run wholesale price increase of $.39 per dozen, or $.0325 per egg."

15. AZDA stated in the Notice of Final Rulemaking that "producers can expect to recoup some of their costs through increased wholesale prices to retailers, etc." and "retailers will likely pass some of the increased costs to consumers."

16. AZDA stated in the Notice of Final Rulemaking that "the transition to cage-free will increase producer's capital expenditures and the costs of facilities and equipment" and that "one in-state producer estimates that it will have to invest hundreds of millions of dollars into converting its existing production facilities to cage-free."

17. AZDA stated in the Notice of Final Rulemaking that "the transition to cage-free housing will increase the costs of production as compared to conventional caged production systems" and "labor inputs, which comprise about five to seven percent of the costs of egg production, could increase as much as 41%."

18. AZDA stated in the Notice of Final Rulemaking that it "estimates that the rulemaking will increase consumer egg costs between $2.71 and $8.79 per person, per year."

19. AZDA stated in the Notice of Final Rulemaking that it estimates "the increased costs of cage-free eggs are between 1 and 3.25 cents per egg" and that "if the average person eats

270.675 eggs per year … then the estimated annual economic impact per consumer is between $2.71 and $8.79 per year."

20. AZDA stated in the Notice of Final Rulemaking that "economists… predict that the Rulemaking will reduce consumer surplus by $4.81 to $11.05 per Arizona household (2.2 persons), per year."

21. AZDA stated in the Notice of Final Rulemaking that—in recognition of the "investment of significant capital"—"to minimize the burden on small businesses, the Department excluded from the rulemaking all operations that house under 20,000 laying hens" so, "the proposed rulemaking will have little, if any, impact on small business within Arizona."

22. AZDA stated in the Notice of Final Rulemaking that "on balance, the Department believes the benefits to public and animal welfare, outweigh the potential economic costs of the rule."

23. There are additional costs associated with cage-free production and producers will be able to pass on most of their increased costs, if not entirely, to consumers.

24. Notwithstanding the Rule's requirements, small egg producers are more likely to have already been following cage-free practices than larger producers.

25. Notwithstanding the Rule's requirements, small producers will likely still have higher production costs compared to the rest of the industry because they have limited economies of scale.

26. Some of the egg producers that fall within the Rule's exemption for operations that house under 20,000 laying hens keep only a handful of chickens, including individuals who raise chickens in their backyard for personal egg consumption.

27. The vast majority of eggs from producers housing under 20,000 laying hens are not commercially available to Arizona consumers.

28. In Arizona, egg production has historically been concentrated among the largest producers.

29. The 20,000-hen exemption may impede an economically meaningful quantity of conventional eggs to be produced or sold in the State of Arizona.

30. Union Hospitality Group ("Union") is a restaurant group based in Tucson, AZ.

31. Union operates three restaurants in Tucson, AZ.

32. Union is managed by restaurateur Plaintiff Grant Krueger.

33. Union currently employs approximately 225 people.

34. Union purchases eggs for several of the menu items at its restaurants, particularly for their brunch service.

35. From November 2022, through October 2023, Union purchased 578 cases or 104,040 eggs for its restaurants.

36. Union typically purchases "somewhere in the range" of "9,000 eggs a month" to "10,000 eggs a month."

37. Union has also purchased egg products as a substitute for eggs.

38. Union does not specifically seek out eggs produced in a cage-free manner when purchasing eggs or egg products for its restaurants.

39. If implemented, Union will be restricted under the Cage Free Egg Rule in its ability to buy non-cage-free eggs and egg products that it would otherwise buy.

40. The increase in the price of eggs caused by the Cage Free Egg Rule will very likely increase Union's costs for eggs and egg products and negatively impact Union's finances.

41. In addition to being a restaurateur, Plaintiff Krueger also buys eggs for his own personal consumption.

42. Mr. Krueger does not specifically seek out cage-free eggs when he purchases eggs for his personal consumption.

43. The Cage Free Egg Rule will restrict Mr. Krueger's ability to choose the type of eggs he purchases for personal consumption.

44. The price increase for eggs caused by the Cage Free Egg Rule will result in Mr. Krueger paying higher prices for eggs he purchases as a consumer, negatively impacting his personal finances.

45. AZDA has postponed implementation of the Rule multiple times, stating that postponement is "necessary due to the low supply of eggs" and due to the "volatility" of egg prices.

**THE COURT FURTHER FINDS** that Plaintiffs have standing to seek declaratory relief because each Plaintiff "is or may be affected by" the challenged rule. *See* A.R.S. § 41-1034(A). First, Plaintiffs argue that they will be injured by the Rule's mandates because the Rule will result in higher prices for the eggs that they purchase and sell in their restaurants, as well as the eggs that Plaintiff Krueger, individually purchases and consumes. The Court assumes that Plaintiffs are correct on the merits for purposes of determining standing. *Montenegro v. Fontes*, 576 P.3d 692, 697, ¶ 19 (2025). But even without that assumption, Plaintiffs have sufficiently demonstrated the probability that they "may be affected" when the Rule finally goes into effect, relying upon past statements of the Department as well as Plaintiff's expert witness's opinion testimony.

Also relevant to the standing analysis, there is no "case or controversy requirement" in the Arizona Constitution, although that requirement does exist in the Federal Constitution. *Montenegro*, 576 P.3d. at 696-97, ¶¶ 16-18; *City of Surprise v. Arizona Corp. Commission*, 246 Ariz. 206, 209, ¶ 8 (2019). Instead, Arizona courts analyze issues of standing to ensure they are not issuing advisory opinions, that they are considering only issues that are ripe for determination and not moot, and that the issues are fully developed. *City of Surprise*, 246 Ariz. at 209, ¶ 8. Here, the parties are clearly adverse, have disputed positions over the enforceability of the Rule, and have "fully, vigorously, and capably argued the law" and have

developed the issues. *Montenegro*, 576 P.3d at 697, ¶ 18. Thus, Plaintiffs' claims are ripe for determination and not moot, rest on fully developed issues, and seek adjudication of the dispute between the parties. This action does not seek an advisory opinion.

**THE COURT FURTHER FINDS** that the Rule is invalid because it is not "specifically authorized" by the statute that it is meant to implement: A.R.S. § 3-710(J). In Arizona, agencies such as Defendant are prohibited by statutes from promulgating any rule that is not specifically authorized by statute. A.R.S. § 41-1030(D)(3). Because § 41-1030(D)(3) is a relatively new statute, there is a dearth of legal authority to guide the Court regarding what is meant by "specifically authorized." But the Court's task in statutory interpretation is to effectuate the text if it is clear and unambiguous, *BSI Holdings, LLC v. Arizona Department of Transportation*, 244 Ariz. 17, 19 ¶ 9 (2018), and here, the Court does not find the words "specifically authorized" to be ambiguous. "Specific" generally means, *inter alia*, explicit or tending to specify. Black's Law Dictionary at 973 (7th ed. 1991). "Authorized" generally means, *inter alia*, permitted or directed or possessed of authority. *Id*. at 90. Put another way, the language of the statute must not only be broad enough to ***authorize or permit*** the mandates/standards that the agency seeks to impose through its rule, that authorization must also be ***specific*** enough to suggest that the Legislature contemplated or anticipated the mandates or standards in the proposed rule.

The statute on which Defendant relies, A.R.S. § 3-710(J), is incredibly broad, declaring: "The director shall adopt rules for poultry husbandry and the production of eggs sold in this state." Indeed, the operative language of § 3-710(J) is so broad and vague that it could be used to authorize nearly any rule promulgated by Defendant that purports to govern the raising of chickens and/or the production of eggs. But the Court agrees with Plaintiffs that "[t]o argue that Section 3-710(J)'s broad instruction to 'adopt rules of poultry husbandry and the production of eggs' can satisfy Section 41-1030(D)(3) would read the word 'specifically' out of the statute[.]" *Motion* at pg. 10. Such an interpretation would be improper under the rules of statutory construction, because "[w]e presume the legislature did not intend to write a statute that contains a void, meaningless, or futile provision, and when possible, we interpret a statute to give meaning to every word." *State v. Pitts*, 178 Ariz. 405, 407 (1994) (internal quotations omitted). Thus, the standard under § 41-1030(D)(3) is not simply whether the subject matter of a statute is broad enough to authorize a particular rule; the standard is whether the language of the statute ***specifically*** authorizes that which the rule mandates.

Section 3-710(J) does not define "poultry husbandry." Nothing in the broad language of the statue suggests that the Legislature intended to specifically authorize Defendant to institute a entirely new ban the sale of all eggs that were not produced in a "cage free" environment, with only a limited exemption for small producers.

**THE COURT FURTHER FINDS** that because the Court will invalidate the Rule based upon a lack of specific authorization in the statute, the Court need not address Plaintiff's argument that the Rule is not reasonably necessary.

**THE COURT FURTHER FINDS** that the Court can resolve the present dispute without addressing Plaintiff's constitutional challenge to Section 3-710(J). For that reason, the Court declines to address the constitutional arguments. *See Brush & Nib Studio, LC v. City of Phoenix*, 247 Ariz. 269, 281 (2019) (Arizona courts will not reach a constitutional question when the case can be fairly decided on other, non-constitutional grounds).

**THE COURT FURTHER FINDS** that no genuine issues of fact exist that preclude summary judgment in favor of Plaintiffs and Plaintiffs are entitled to judgment as a matter of law.

On good cause, and in the Court's discretion,

**IT IS ORDERED** granting in part Plaintiffs' *Revised Motion for Summary Judgment* and declaring that A.A.C. R3-2-907 (the "Cage Free Egg Rule") violates A.R.S. § 41-1030(D)(3) and is therefore invalid and unenforceable. Defendant's *Replacement Motion for Summary Judgment* is denied.

**IT IS FURTHER ORDERED** declining to address the parties' remaining arguments as either moot or unpersuasive.

**IT IS FURTHER ORDERED** directing Plaintiffs to prepare and lodge a form of Judgment on or before **November 20, 2026**. Plaintiffs shall file any application for attorney's fees and statements of taxable costs by this deadline as well. Defendants shall file any objections or responses to the form of judgment or to the requests for attorney's fees and costs within **twenty (20) days** thereafter.

**IT IS FURTHER ORDERED** the Judgment shall contain Rule 54(c) language as no further matters remain pending and there is no just reason for delay.