

Calif.'s Egg Regs May Leave Farmers Scrambling

--By Amie Medley, Arnold & Porter LLP

Law360, New York (December 10, 2014, 12:21 PM ET) -- A federal court recently dismissed a lawsuit challenging California's AB 1437, which extends new requirements imposed by Proposition 2 for the treatment of egg-laying hens to out-of-state farmers that sell eggs in California. Missouri Attorney General Chris Koster filed the lawsuit in March alleging that the newly hatched egg requirements violate the Commerce Clause of the U.S. Constitution because of the impact they would have on egg farmers outside of California. The questions presented in the lawsuit had potential implications for other measures seeking to condition the sale of goods in California on compliance with state regulations. However, the suit was dismissed for lack of standing.

As of Jan. 1, 2015, the requirements of Proposition 2, adopted by California voters in 2008, will take effect. Proposition 2 requires that farmers must provide egg-laying hens in California with room to stand up, lie down and extend their wings, all of which are supposedly impossible in widely used conventional cages. AB 1437, adopted by the Legislature in response to Proposition 2, will prohibit the sale of eggs in California from out-of-state farms that do not comply with Proposition 2's requirements. Koster filed the lawsuit challenging the constitutionality of AB 1437 on behalf of Missouri egg farmers, who sell one-third of their eggs to California consumers. Nebraska, Oklahoma, Alabama, Kentucky and Iowa also joined the complaint in the Eastern District of California. They alleged that the California regulations violate the Commerce Clause because "the bill's true purpose was not to protect public health, but to protect California farmers from the market effects of Prop 2." The complaint went on to allege that the law "imposes a substantial burden on interstate commerce by forcing Plaintiffs' farmers either to forgo California's markets altogether or accept significantly increased production costs just to comply with California law."

The actual motives behind AB 1437's passage are unclear. The Legislature stated its purpose was to "protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to significant stress and may result in increased exposure to disease pathogens including salmonella." But a legislative committee originally stated its intent was to level the playing field for California egg producers, and Gov. Jerry Brown's message on signing the bill crowed about its benefits for "California egg producers and animal welfare" — without mentioning the law's supposed health and safety benefits.

Had the lawsuit proceeded, the court would have faced the task of unscrambling these motives. A finding that California sought to discriminate in favor of the economic interests of its own citizens would have required a showing that California had no other viable alternative to protect its consumers from supposedly unhealthy eggs produced out of state in order for the law to survive. Even if the law were found to be nondiscriminatory, the court would then have needed to consider whether the law's burden on interstate commerce — the cost of renovating chicken coops producing over 5 billion eggs a year — was "clearly excessive" in comparison to its "putative local benefits."

For decades, California requirements in the same vein as Proposition 2, such as Proposition 65 and volatile organic compound limits for personal care products, have set de facto national standards for consumer products based on claimed health and environmental impacts inside California. A new decision regarding the application of the Commerce Clause and its inverse, the "Dormant Commerce Clause," could have implications for other California laws that seek to condition the sale of goods in California on compliance with state regulations. Most importantly, California's Green Chemistry (Safer Consumer Products) regulations authorize

wide-ranging restrictions on consumer products sold in the state, regardless of where they are produced. Like California's egg law, implementation of the regulations may be subject to challenge based on their extraterritorial reach. Manufacturers of the identified products could be required to engage in an analysis of whether a safer alternative to the identified chemicals could be used, including an analysis of the environmental impacts of the manufacturing process. On the other hand, past Ninth Circuit cases have indicated that, as long as such regulations apply equally to in-state and out-of-state companies and address manufacturing or other business activities rather than directly affecting pricing, the Commerce Clause is not implicated.

These questions regarding the application of the Dormant Commerce Clause will remain unanswered for the moment. On Oct. 2, Judge Kimberly Mueller of the Eastern District of California dismissed the lawsuit on standing grounds, ruling that the states did not have standing under the *parens patriae* doctrine because each state was actually only representing the interests of the group of egg farmers within its state that had opted not to comply with the new law, rather than a significant portion of their citizenry. The court also rejected the states' argument that they had standing based on their own quasi-sovereign interests because the impact of California's law would not sufficiently impact the citizens and economy of their states. Finally, the judge decided that the states had not presented a justiciable question for decision because there was no indication that out-of-state egg farmers planned to violate California's law or that California would enforce the criminal penalties for violating the law.

While a decision regarding the application of the Commerce Clause in the context of Proposition 2 might have offered some clarity regarding its application to other regulations, the court's reasoning on standing grounds may present obstacles for states seeking to challenge other California regulations that affect businesses within their boundaries. The district court's opinion, while not binding on other courts, demonstrates that states wishing to challenge such regulations may have to do more to establish standing and justiciability in order to bring a challenge based on the Commerce Clause. States could potentially do so by establishing that the regulation they seek to challenge affects more than a small subset of its population or by demonstrating a negative economic impact of the regulations.

It may be that California's egg-related regulations could still be challenged by different plaintiffs that do have standing. An industry group of out-of-state egg farmers, for example, might fare better because they would be representing their own interests. Such a challenge might also have a better chance at success after the law goes into effect in the event that it is enforced against out-of-state farmers, solving any doubts about whether a justiciable question exists. For the moment, however, California's AB 1437 remains unscathed.

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