

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

MASSACHUSETTS RESTAURANT
ASSOCIATION, HOSPITALITYMAINE,
NEW HAMPSHIRE LODGING &
RESTAURANT ASSOCIATION, RHODE
ISLAND HOSPITALITY ASSOCIATION,
RESTAURANT LAW CENTER, and the
NATIONAL PORK PRODUCERS
COUNCIL,

Plaintiffs,

v.

MAURA HEALEY, in her Official Capacity
as the Attorney General of Massachusetts, and
JOHN LEBEAUX, in his Official Capacity as
Commissioner of the Massachusetts
Department of Agricultural Resources,

Defendants.

Civil Action No. 4:22-cv-11245-MLW

STIPULATION AND JOINT MOTION TO STAY

Plaintiffs Massachusetts Restaurant Association, HospitalityMaine, New Hampshire Lodging & Restaurant Association, Rhode Island Hospitality Association, Restaurant Law Center, and the National Pork Producers Council (“Plaintiffs”) and defendants Maura Healey, in her Official Capacity as the Attorney General of Massachusetts, and John Lebeaux, in his Official Capacity as Commissioner of the Massachusetts Department of Agricultural Resources (“Defendants”) (collectively, “Parties”) respectfully submit this Stipulation and Joint Motion to Stay. Dkt. 14, ¶ 2. As grounds for this Motion, the Parties state as follows:

(1) Through this lawsuit, Plaintiffs seek a declaration that M.G.L. c. 129 App. § 1-3(C), 330 CMR § 35.04(1)(c), and the official guidance interpreting same (the “Pork Sale Rules”) violate the dormant Commerce Clause of the Constitution of the United States. Dkt. 1.

(2) The Supreme Court is currently reviewing a constitutional challenge to a similar California law that raises many of the same issues that are raised in this case. *National Pork Producers Council v. Ross*, 6 F.4th 1021 (9th Cir. 2021), *cert granted*, 142 S. Ct. 1413 (2022) (Docket No. 21-468) (“*NPPC Appeal*”).

(3) Plaintiffs have filed an Emergency Motion for Preliminary Injunction seeking an order that would prevent the Defendants from enforcing the Pork Sale Rules, which are scheduled to take effect on August 15, 2022. Dkt. 3. That motion is currently pending.

(4) The Supreme Court is expected to issue its decision in the *NPPC Appeal* sometime between December, 2022 and the end of the Supreme Court’s term in June, 2023.

(5) On August 4, 2022, the Court entered an order requiring the Parties to confer and “report whether they have reached an agreement that obviates the need for a hearing on or before August 15, 2022 on the Motion for Preliminary Injunction, including a possible agreement to stay this case until the Supreme Court decides [the *NPPC Appeal*].” Dkt. 10, ¶ 1.

(6) The Parties disagree on the merits of this lawsuit, the *NPPC Appeal*, and the pending Motion for Preliminary Injunction.

(7) The Parties do, however, agree that the Supreme Court’s decision in the *NPPC Appeal* may generate controlling law that will substantially clarify, if not govern in whole or in part, the legal issues in this action.

(8) Thus, in order to conserve scarce judicial and public resources, the Parties agree that this case should be stayed while the *NPPC Appeal* is pending and for thirty (30) days from the issuance of the Supreme Court's final decision in that matter (the "Stay Period").

(9) Defendants agree that they will not enforce the Pork Sale Rules against any Plaintiff or non-party during the Stay Period.

(10) Defendants further agree that they will not enforce the Pork Sale Rules against any Plaintiff or non-party for any conduct that occurs during the Stay Period.

(11) The Parties agree that they will jointly confer within ten (10) days of the Supreme Court's final ruling in the *NPPC Appeal* and advise the Court within twenty (20) days of the Supreme Court's final ruling in the *NPPC Appeal* and propose a plan for future proceedings, if any.

(12) Nothing in this stipulation and joint motion shall be construed as an admission concerning the merits of this lawsuit. The Parties reserve all claims and defenses.

WHEREFORE, the Parties jointly request that the Court stay this action until 30 days after the issuance Supreme Court's decision on in the *NPPC Appeal*, by which time the Parties will file a proposal for future proceedings in the case, if any.

STIPULATED and AGREED this 10th day of August, 2022.

Respectfully submitted,

ALL PLAINTIFFS,

by their counsel,

/s/ Robert M. Shaw

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*Motion for admission *pro hac vice*
forthcoming.

Respectfully submitted,

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DEFENDANTS MAURA HEALEY, in her Official Capacity as the Attorney General of Massachusetts, and

JOHN LEBEAUX, in his Official Capacity as Commissioner of the Massachusetts Department of Agricultural Resources

by their counsel,

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SO ORDERED,

Mark L. Wolf
United States District Judge

Date: _____

CERTIFICATE OF SERVICE

I hereby certify that today, August 10, 2022, I caused a true copy of the foregoing to be filed through the Court's ECF system, which will serve counsel for the Defendants by e-mail.

/s/ Robert M. Shaw

Robert M. Shaw