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September 25, 2023

The Honorable Kevin McCarthy  
Speaker of the House  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Hakeem Jeffries  
Minority Leader  
U.S. House of Representative  
Washington, D.C. 20515

The Honorable Chuck Schumer  
Majority Leader  
U.S. Senate  
Washington, D.C. 20515

The Honorable Mitch McConnell  
Minority Leader  
U.S. Senate  
Washington, D.C. 20515

Esteemed Congressional Leaders,

We, the Attorneys General of Michigan and Illinois, along with Attorneys General representing Arizona, California, Connecticut, District of Columbia, Hawaii, Maine, Maryland, Massachusetts, New Jersey, New Mexico, New York, Oregon, Pennsylvania, and Vermont write in strong opposition to the Ending Agricultural Trade Suppression (“EATS”) Act. The Act is a severe incursion into the rights of States and local governments to regulate agricultural products sold within their jurisdictions, and Congress should soundly reject this invitation.

Although the basic framework of the EATS Act is not new, the impetus for this rejuvenated version was the United States Supreme Court’s decision in *National Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023), which rejected a challenge to California’s Proposition 12 based on purported extraterritorial regulation under the dormant Commerce Clause. In addition to upholding Proposition 12—a law regulating the sale of pork products in California—the Court reiterated that “[c]ompanies that choose to sell products in various States must normally comply with the laws of those various States.” One exception, which was not applicable to Proposition 12, is when a law is driven by economic protectionism—in other words, where it is designed to benefit in-state economic interests at the expense of out-of-state interests.

This decision aligns with important and longstanding state interests, as explained by an amicus brief filed by a coalition of 15 States. *See* Brief of Illinois, Michigan, Colorado, Connecticut, District of Columbia, Maine, Maryland,

Massachusetts, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, and Washington as Amicus Curiae in Support of Respondent in *National Pork Producers Council v. Ross*, 143 S. Ct. 1142 (2023), available at [NPPC v. Ross State Amicus Brief Final \(supremecourt.gov\)](#). In particular, States have a powerful sovereign interest in exercising their police powers to enact laws promoting the health, safety, and welfare of their residents, including by regulating the goods and services sold within their borders, and have significant police power authority to regulate matters of legitimate local concern, even if interstate commerce might be affected. *Id.* Constraining the States' traditional regulatory role would harm the States' residents, who have come to rely on these important protections in a number of areas, among which are the regulation of food and agricultural products.

Indeed, States are in a unique position to regulate in a way that is responsive to local circumstances and local needs. Yet the EATS Act would jeopardize numerous such laws and regulations across all States and potentially erect a barrier to new state laws that would address local concerns. As the 171 House Representatives who recently opposed the EATS Act aptly noted, it “aims to negate state and local laws even if there is no federal standard to take their place, creating an overnight regulatory vacuum.” August 21 letter of 171 lawmakers to Chairman Glenn Thompson and Ranking Member David Scott of the House Committee on Agriculture. It is no wonder that these lawmakers and the thirty Senators who recently expressed strong opposition to the EATS Act or any similar legislation in the 2023 Farm Bill characterized the bill as “particularly draconian.” *Id.*; August 29 letter of 30 Senators to Chairwoman Debbie Stabenow and Ranking Member John Boozman.

As an example, in Michigan alone, the EATS Act threatens laws that govern subjects as varied as cage-free eggs, flammability standards for cigarettes, restrictions on the sale of foods that are past their due date, and restrictions on the production and sale of foods that are not prepared in a commercial kitchen, to name just a few. The EATS Act would do this, in part, by forcing a lowest-common-denominator approach: if any one State permits the production or sale of a particular agricultural product—no matter how hazardous the product, or how dangerous or unacceptable the production process—every other State could be forced to do so as well. State sovereignty demands greater respect.

There are undoubtedly times when a uniform, nationwide rule is necessary, but not here, where the exercise of Congress's authority would be both unnecessary and unwise. For over 200 years, States and local governments have been responsible for ensuring that there is a safe and healthy food supply for their consumers, and that farm products sold locally are governed by locally accountable, elected officials. The EATS Act would up-end that crucial balance of federal and state authority.

For these reasons, the undersigned State Attorneys General urge you to protect the States' ability to determine their own agricultural policies—policies that protect both citizens and animals, account for local concerns, and reflect the will of the People in that State. Reject the EATS Act or any similar bill.

Sincerely,



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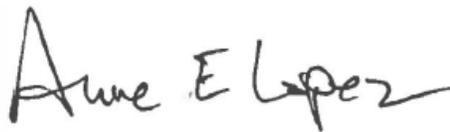
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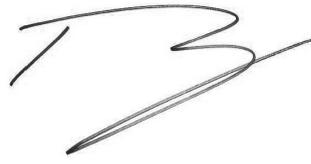
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