March 5, 2024

Honorable Kay Ivey
Governor
State Capitol
600 Dexter Avenue
Montgomery, AL 36130

Honorable Nathaniel Ledbetter
Speaker
Alabama House of Representatives
11 South Union Street
Suite 519-I
Montgomery, AL 36130

Honorable Will Ainsworth
President and Presiding Officer
Alabama State Senate
11 South Union Street
Suite 725
Montgomery, AL 36130

Opposition to SB 23

Dear Governor Ivey; Speaker Ledbetter; and Senate President Ainsworth:

The Meat Institute submits this letter opposing SB 23 pending before the Alabama legislature that would, if enacted, impose certain requirements on cell cultivated meat products. The Meat Institute is the nation's oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products and Meat Institute member companies account for more than 95 percent of United States output of these products. The Meat Institute opposes this bill: 1) because it would be preempted by federal law and 2) because they are bad public policy that would restrict consumer choice and stifle innovation.

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The Federal Meat Inspection Act Contains Explicit Preemption Language Precluding State Requirements; Including Sales Bans and Labeling Requirements.

The Supremacy Clause of the U.S. Constitution establishes that the federal constitution, and federal law generally, take precedence over state laws, and even state constitutions.[1] The Federal Meat Inspection Act (FMIA) regulates the processing and distribution of meat products in interstate commerce.[2] And the FMIA also contains an explicit preemption provision regarding meat products prepared at any establishment under inspection under Title I of the FMIA.[3] That provision provides that:

> Requirements within the scope of this chapter with respect to premises, facilities and operations of any establishment at which inspection is provided under subchapter I of this chapter, which are in addition to, or different than those made under this chapter may not be imposed by any State or Territory or the District of Columbia, except that any such jurisdiction may impose recordkeeping and other requirements within the scope of section 642 of this title, if consistent therewith, with respect to any such establishment. Marking, labeling, packaging, or ingredient requirements in addition to, or different than, those made under this chapter may not be imposed by any State or Territory or the District of Columbia with respect to articles prepared at any establishment under inspection in accordance with the requirements under subchapter I of this chapter, …[4]

That the scope of this explicit preemption provision is broad has been repeatedly confirmed by the federal courts. Most notably, in 2012 the United States Supreme Court, in a 9-0 decision, stated:

> The FMIA's preemption clause sweeps widely, and so blocks the applications of §599f challenged here. The clause prevents a State from imposing any additional or different—even if nonconflicting—requirements that fall within the FMIA's scope and concern slaughterhouse facilities or operations.[5]

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[1] U.S. Constitution, Article VI, paragraph 2.
[2] 21 U.S.C. 601 *et. seq*.
[3] 21 U.S.C. 678. The Poultry Products Inspection Act (PPIA) has an almost identical preemption provision, 21 U.S.C. 467e.
[4] 21 U.S.C. 678.
[5] *NMA. v. Harris*, 131 S. Ct. 3083 (2012) (emphasis added).

Harris specifically discussed whether a state, California, could ban the sale of meat derived from nonambulatory hogs: "… the Humane Society's stronger argument concerns California's effort to regulate the last stage of a slaughterhouse's business—the ban in §599f(b) on 'sell[ing] meat or products of nonambulatory animals for human consumption'."[6] The Court, however, rejected the argument the sales ban was not preempted, saying:

> And indeed, if the sales ban were to avoid the FMIA's preemption clause, then any State could impose any regulation on slaughterhouses just by framing it as a ban on the sale of meat produced in whatever way the State disapproved. That would make a mockery of the FMIA's preemption provision. *Cf. Engine Mfrs. Assn. v. South Coast Air Quality Management Dist*., 541 U. S. 246, 255 (2004) (stating that it "would make no sense" to allow state regulations to escape preemption because they addressed the purchase, rather than manufacture, of a federally regulated product). Like the rest of §599f, the sales ban regulates how slaughterhouses must deal with nonambulatory pigs on their premises. The FMIA therefore preempts it for all the same reasons.[7]

The same rationale applies to a ban on the manufacture, sale, *etc*. of cell cultivated meat, as provided in SB 23.

The FMIA's preemption provision also precludes states from imposing labeling requirements that are "in addition to, or different than" those imposed by the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS or the agency). The FMIA broadly defines the term "label" to mean "a display of written, printed, or graphic matter upon the immediate container (not including package liners) of any article" and it defines the term "labeling" broadly to mean "all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article."[8] The FMIA also requires the labeling of meat products to be approved by the Secretary of Agriculture to ensure it is not "false or misleading in any particular," a task delegated to FSIS.[9] Indeed, FSIS is in the process developing regulations addressing the issues attendant to labeling cell cultivated meat and poultry products[10] and the agency has already approved labeling submitted by two companies. In both cases, FSIS approved product labeling using the term "cell-cultivated chicken" to reference the

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[6] *Id*.
[7] *Id*. (emphasis added).
[8] 21 U.S.C. 601(o), (p) (emphasis added). The PPIA includes identical provisions, 21 U.S.C. 453(s).
[9] 21 U.S.C. 601(n)(1), 607(d). The PPIA includes an identical requirement, 21 U.S.C. 453(h)(1), 457(c).
[10] *See* USDA *Advance Notice of Proposed Rulemaking on Labeling of Meat or Poultry Products Comprised of or Containing Cultured Animal Cells*, 86 *Fed. Reg.* 49491 (Sept. 3, 2021).

products. To the extent Alabama is considering labeling requirements for federally inspected meat or poultry products that are "in addition to, or different than," even if non-conflicting, they will be preempted.

This conclusion is consistent with an extensive line of cases regarding state labeling laws under which the courts have consistently found state requirements to be preempted by the FMIA and the Poultry Products Inspection Act (PPIA). For example, in March 2022 the United States Court of Appeals for the 10th Circuit found state labeling claims that sought to impose additional or different labeling requirements than those required by the FMIA or PPIA to be preempted. See *Thornton v. Tyson Foods, Inc.*, 28 F4th. 1016 (10th Cir. 2022). See also: *Jones v. Rath Packing Co.*, 430 U.S. 519, 532 (1976) (holding that the FMIA preempted a California law regarding net weight labeling that made no allowance for loss of weight resulting from moisture loss where FSIS permitted reasonable variations); *Grocery Manufacturer's Association v. Sorrell*, 102 F. Supp.3d 583 (D. Vt. 2015) (finding that the FMIA and PPIA would preempt a Vermont law that imposes labeling requirements that were not mandated by federal law); *National Broiler Council v. Voss*, 44 F.3d 740 (9th Cir. 1994) (finding the PPIA preempts a California law prohibiting use of the word "fresh" on labels of poultry products unless poultry has been stored at temperatures at or above 26 degrees where the state requirement differed from the federal requirement); *Barnes v. Campbell Soup Co.*, 2013 WL 5530017 (N.D. Cal. July 25, 2013) (finding a state law claim to be preempted by the FMIA and PPIA where FSIS previously approved defendant's product labels); *Armour & Co. v. Ball,* 468 F.2d 76 (6th Cir. 1972) (finding a Michigan law preempted because it established a standard of identity for sausage different than the federal standard), *cert. denied,* 411 U.S. 981 (1973); *Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corporation*, 626 F. Supp. 278, 282-85 (D. Mass.) ("Meat ingredient standards, labeling and packaging have been preempted by the FMIA"), *aff'd*, 802 F.2d 440 (1986); *Grocery Manufacturers of America v. Gerace*, 581 F. Supp. 658, 666 (S.D. N.Y. 1984) (holding the FMIA to preempt a New York law regarding labeling of meat food products containing "imitation" cheese), *aff'd in part and rev'd in part on other grounds*, 755 F.2d 993 (2d Cir. 1985).

In addition to the judicial precedent, USDA officials have not hesitated to advise states of the broad preemptive effect that the FMIA and PPIA have with respect to state-imposed requirements for meat and poultry. USDA views the preemption provision as an integral part of the comprehensive regulatory scheme created by the FMIA and PPIA.[11] Former USDA General Counsel Nancy Bryson

[11] *See* Letter from Ann M. Veneman, Secretary of Agriculture, to the Honorable Arnold Schwarzenegger, Governor of California (Dec. 15, 2004); Letter from Mike Espy, Secretary of Agriculture, to the Honorable Pedro J. Rossello, Governor of Puerto Rico (Feb. 1, 1993); Letter from

described the laws as creating a "comprehensive statutory framework"— a framework designed to ensure that the labeling and packaging of meat and poultry products is truthful and not misleading. Ms. Bryson underscored USDA's long-standing position that state requirements that are "in addition to, or different than, the federal requirements" are preempted.[12]

The Bill Represents Bad Public Policy that would Restrict Consumer Choice and Stifle Innovation.

The Meat Institute played a critical role in ensuring cell cultivated meat products were subject to regulatory oversight not only by the Food and Drug Administration, but also USDA. This federal regulatory framework has been carefully designed to ensure the safety of cell cultivated meat products that come to market and that these products are labeled in a truthful and non-misleading manner. After extensive review and analysis of the cell cultivated production process and inputs, those agencies concluded such products are safe for human consumption.[13] That conclusion led to USDA issuing a grant of inspection to two companies, which subjects those companies to the FMIA and above-discussed preemption provision. Importantly, USDA oversight of cell cultivated meat products pursuant to the FMIA and PPIA means those products are subject to the same food safety and other requirements, including labeling approval, as conventional meat and poultry products, thereby ensuring a level playing field.

Legislators and others who support SB 23 do so at their peril, and the peril of others, because the bill and others like it establish a precedent for adopting policies and regulatory requirements that could one day adversely affect the bills' supporters. Indeed, like California's Proposition 12 and Massachusetts' Question 3, SB 23 serves as an incentive for other jurisdictions to consider and enact legislation that could adversely affect agriculture, including in Alabama. For example, a significant market elsewhere for meat products – a city, county, or state – could elect to ban or tax the sale of certain, conventional meat products, all in the name of climate change, alleged "safety" concerns about a new technology used to raise livestock, or fears about the products' impact on human health – regardless of whether those concerns have a scientific foundation. The bills help foster such an environment, to the detriment of agricultural producers in Alabama and elsewhere.

Richard E. Lyng, Secretary of Agriculture, to the Honorable George Deukmajian, Governor of California (June 12, 1987).

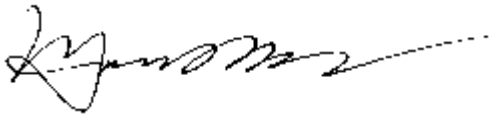
[12] *See* Letter from Nancy Bryson, USDA General Counsel, to the Honorable Bill Lockyer, Attorney General, State of California (Feb. 10, 2005).

[13] USDA has engaged in a review of other production processes to ensure they too yield a safe product.

The Meat Institute is agnostic regarding whether Alabamans will buy cell cultivated meat products. Perhaps they will; perhaps they will not. But restricting the sale and manufacture of cell cultivated meat products limits consumer choice and denies Alabamans access to food options. Decisions about what to consume or purchase should be left to the market and consumers, not dictated by legislation that hampers progress and competition. As for labeling cell cultivated products, to ensure a level playing field Congress has empowered USDA to determine the appropriate labeling for these products. Put simply, SB 23 would amount to significant government overreach that would unduly limit consumer choice and access to food, impose requirements that are preempted by federal law, and ultimately harm Alabama consumers and businesses.

The Meat Institute appreciates the opportunity to provide its perspective regarding this important issue. I am happy to discuss further the Meat Institute's concerns about this matter, mdopp@meatinstitute.org or 202 587 4229. Thank you for your consideration.

Respectfully submitted,



Mark Dopp

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