

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

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In the Matter of

THE CITY OF NEW YORK,

Petitioner,

**VERIFIED
PETITION**

Index No.

For a Judgment Under Article 78 of the New York CPLR

-against-

RICHARD A. BALL, as Commissioner of Agriculture and
Markets of the State of New York, and the NEW YORK
STATE DEPARTMENT OF AGRICULTURE AND
MARKETS,

Respondents.

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The City of New York, by its attorney HON. SYLVIA O. HINDS-RADIX,
submits this petition and respectfully alleges upon knowledge as to its own acts and upon
information and belief as to the acts of others as follows:

PRELIMINARY STATEMENT

1. This petition is brought to challenge the determination dated December
14, 2022 (“Final Determination”) of respondents Ball and the New York State Department of
Agriculture and Markets (“DAM”) that New York City (“City”) Law No. 2019/202, codified as
New York City Administrative Code § 17-1901, *et seq.* (“Local Law 202”) violates Section 305-
a(1) of the New York Agriculture and Markets Law (“AML”), and ordering the City to not take
any action in the administration of or pursuant to Local Law 202 that would restrict Hudson
Valley Foie Gras, LLC (“HVFG”) and La Belle Farm, Inc. (“LBF”) from selling their force-fed
foie gras product in New York City. Respondents’ determination was arbitrary, capricious, an

abuse of discretion, made in violation of lawful procedure, affected by errors of law, and imposed without and in excess of jurisdiction for a wide variety of reasons. These reasons include: (1) respondents acted in excess of their jurisdiction and in violation of lawful procedure, and the Final Determination was affected by an error of law, because respondents lack the authority under AML § 305-a to review and/or invalidate Local Law 202; (2) the Final Determination violates the City's municipal home rule powers; (3) and the Final Determination is arbitrary and capricious.

A. Parties and Entities Involved

2. Petitioner the City of New York is a municipal corporation organized pursuant to the laws of the State of New York.

3. Richard A. Ball, who is named in his official capacity, is Commissioner of the New York State Department of Agriculture and Markets, and as such is the chief executive and administrative officer of that Department.

4. The New York State Department of Agriculture and Markets ("DAM") is an agency of the State of New York with responsibility to, *inter alia*, carry into effect the laws and rules of the State of New York relative to agriculture, horticulture, farm, fruit, and dairy products, aquaculture, and the production, processing, transportation, storage, marketing and distributing of food, including AML § 305-a.

5. Commissioner Ball and DAM issued the Final Determination on December 14, 2022, purportedly pursuant to AML § 305-a, directing that the City may not implement Local Law 202, at least as against HVFG and LBF.

6. Non-parties HVFG and LBF initiated respondents' review of Local Law 202 by filing a complaint pursuant to AML § 305-a with DAM.

7. Non-party HVFG is a farm operation located in the Town of Ferndale, New York. HVFG produces and/or distributes products used to make duck meat, foie gras, feathers, duck fat, pet food and treats, and other products.

8. Non-party LBF is a poultry farm operation with four farms located in the Towns of Cohecton, Liberty, and Bethel in New York State. LBF's farms process and sell all parts of the ducks they raise. LBF also grows corn.

B. Local Law 202

9. Local Law 202 was enacted in New York City on November 25, 2019, after having been passed with overwhelming support by New York City Council ("City Council") on October 30, 2019. A copy of Local Law 202 is annexed hereto as Exhibit 1.

10. Local Law 202 banned the provision and sale of force-fed poultry products, such as foie gras, within City borders, with an effective date of November 25, 2022,¹ to allow for city agencies to take necessary measures for the implementation of the law.

11. Local Law 202 defines the term "force-feeding" as the "practice of forcing, by any means, food or supplements into the throat, esophagus, crop or stomach of an animal," and a "force-fed product" as "any product that is the result of force-feeding a bird, including but not limited to a duck or a goose, with the intent to fatten or enlarge the bird's liver."

12. Admin. Code § 17-1901. Local Law 202 provides that:

No retail food establishment or food service establishment, or agent thereof, shall store, keep,

¹ Local Law 202 is currently preliminarily enjoined pursuant to Court Order in a separate proceeding brought by HVFG and LBF. See La Belle Farms, Inc. v. City of N.Y. (Sup. Ct., N.Y. County, May 20, 2022) (Sweeting, J.), Index No. 656399/2022, NYSCEF Doc. No. 61 (order granting preliminary injunctive relief).

maintain, offer for sale, or sell any force-fed product or food containing a force-fed product. For purposes of this chapter, it shall be a rebuttable presumption that an item in a retail food establishment or food service establishment having the label “foie gras” or listed on a menu as “foie gras” is a force-fed product. A party seeking to rebut such presumption shall provide documentary evidence proving that the product they are storing, keeping, maintaining, offering for sale, or selling is not a force-fed product as defined in this chapter.

Admin. Code § 17-902.

13. In enacting Local Law 202, the City Council considered extensive evidence, testimony, and public opinion regarding the practice of force-feeding birds to produce luxury culinary products such as foie gras. The entire legislative record is available at: <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3844860&GUID=A91556AB-4F62-4902-A808-0FEE9B46F16D&Options=ID%7CText%7C&Search> (last visited Jan. 10, 2023).

14. Respondents reviewed the legislative record of Local Law 202 and considered it in making the Final Determination.²

Foie Gras Production

15. Force-fed products such as foie gras are produced from male geese and ducks. At just 8 to 10 weeks old, male birds enter the force feeding or “gavage” stage of farming, in which they are involuntarily fed by inserting a foot-long metal or plastic pipe down the bird’s esophagus.

² The legislative history of Local Law 202 contains the facts and testimony heard by City Council regarding foie gras production and public opinion regarding foie gras production, and is a matter of public record.

16. Two to four pounds of grain and fat are forced down the birds' esophagus at least two to three times per day.

17. This process often results in bruising, lesions, perforation of the esophagus, and can cause asphyxia or suffocation if the food enters the trachea instead of the esophagus.

18. The objective of this force feeding is to produce a liver ten times the size of a non-force-fed bird.

19. Birds who are subjected to gavage have abnormal liver growth that displaces the birds' internal organs, and make it difficult to breathe.

20. The liver of these force-fed animals often becomes diseased with hepatic lipidosis, a condition known to cause suffering and fatal health consequences. The force-feeding required to produce foie gras is so hard on the birds' physical health that they would die from the pathological damage it inflicts if they were not slaughtered first.

21. Birds subjected to gavage are twenty-times more likely to die than those that are not force-fed, and necropsy reports of these animals confirm the severe health consequences of the practice.

22. Planned inspections often do not provide accurate or trustworthy representations of animal treatment during force-feeding because considerable more time and care is taken for each bird during planned visits than during day-to-day operation. Practically speaking, given basic metrics such as number of birds, number of workers, and number of feedings, day-to-day operations would require that each bird be force-fed in a fraction of the time spent during planned demonstrations

23. This was further evident in testimony before City Council regarding conditions witnessed by individuals that appeared on the premises unplanned. The birds were roughly handled, restrained in tiny wire cages and were visibly in distress with lesions on their bodies, and broken wings and feet. Several birds had severe neck wounds, lesions, and open cuts from force feeding—including a duck that appeared to have a neck wound infected by maggots.

Public Opinion in New York City and Foie Gras

24. A poll by Mason-Dixon Polling and Strategy found that 81% of people in New York City support the sales ban on foie gras.

25. Many major food retailers including Costco, Target and Whole Foods have refused to sell foie gras.

26. Additionally, force-feeding animals is illegal in over fifteen countries including Israel, Germany, Norway, Australia, and the United Kingdom.

27. In the United States, California has passed a state-wide ban on the sale of foie gras that has been continually upheld in court.

28. The American Veterinary Medical Association (“AVMA”) has declared that force feeding is inherently inhumane, as has the Humane Society Veterinary Medical Association.

29. Fifty New York veterinarians and fifty non-profit organizations submitted or signed on to testimony presented to City Council stating that gavage is inhumane.

30. In contrast, the testimony to City Council in opposition³ to Local Law 202 was exclusively submitted by individuals who are employed or financially benefitted by HVFG, LBF, or Rougie, a company that touts itself as the “world’s number 1 producer of foie gras.”

Public Health and Foie Gras

31. The City Council also heard testimony regarding health concerns and foie gras.

32. A study published in the International Journal of Food Safety, Nutrition, and Public Health found that compounds in fatty goose and duck liver can accelerate certain disease in individuals with specific precursors.

33. Mayor Eric Adams, in his former role as the Brooklyn Borough President, emphasized that foie gras is unhealthy and derives 85% of its calories from fat. Ingestion of foie gras may raise one’s risk of developing Alzheimer’s and Huntington’s disease, Type 2 diabetes, and “New York’s number one killer”—heart disease.

C. Agriculture and Markets Law Article 25-AA

34. AML Article 25-AA was enacted to “provide a locally-initiated mechanism for the protection and enhancement of New York state’s agricultural land...” In so doing, the legislature noted:

[M]any of the agricultural lands in New York state are in jeopardy of being lost for any agricultural purposes. When nonagricultural development extends into farm areas, competition for limited land resources results. Ordinances inhibiting

³ The New York State Restaurant Association submitted written testimony in support of banning the sale of force-fed products, but indicated that if it were possible to produce “foie gras” without force-feeding, such “natural foie gras” should not be banned. Other testimony reflects that it is not possible to produce foie gras without force feeding at this time.

farming tend to follow, farm taxes rise, and hopes for speculative gains discourage investments in farm improvements, often leading to the idling or conversion of potentially productive agricultural land.

AML § 300.

35. AML § 303 provides for the creation of an “agricultural district” as a local affair conducted by the county legislative body in which it is located with ultimate certification by the Commissioner of DAM. The county legislative body makes the decision regarding whether to accept or reject the proposal for a new agricultural district, as submitted or with modifications, after hearing from, *inter alia*, county landowners, municipalities within the proposed district, and the county agricultural and farmland protections board. AML § 303(2)-(5). If accepted, the proposal must be certified by DAM’s Commissioner to become an agricultural district. AML § 303(6)-(8).

36. Similarly, agricultural districts are reviewed by the county legislative body in which the district is located every eight years. AML § 303-A.

37. Farm operations within agricultural districts receive various benefits aimed at preserving and enhancing agricultural land. See AML Article 25-AA.

38. AML § 305-a codifies one such benefit by directing:

Local governments, when exercising their powers to enact and administer comprehensive plans and local laws, ordinances, rules or regulations, shall exercise these powers in such manner as may realize the policy and goals set forth in this article, and shall not unreasonably restrict or regulate farm operations within agricultural districts in contravention of the purposes of this article unless it can be shown that the public health or safety is threatened.

AML § 305-a(1)(a) (emphasis added).

39. The Commissioner of DAM is given the authority to review, render an opinion, and/or bring an action to enforce AML § 305-a “to the appropriate local government officials, as to whether farm operations would be unreasonably restricted or regulated by proposed changes in local land use regulations, ordinances or local laws pertaining to agricultural practices and to the appropriate local land use enforcement officials administering local land use regulations, ordinances, or local laws or reviewing a permit pertaining to agricultural practices.” AML § 305-a(1)(b) & (c).

40. There are no agricultural districts within the City.

41. HVFG and LBF are located in Sullivan County agricultural districts numbers 1 and 4.

D. Procedural History

42. Upon information and belief, HVFG and LBF requested that DAM review Local Law 202 pursuant to AML § 305-a because they allege that they will be negatively financially impacted if unable to sell their foie gras in the City.

43. By letter dated August 4, 2020, DAM sent a letter addressed to then-Mayor Bill de Blasio, indicating that it had conducted an initial review and analysis⁴ of Local Law 202 and found that the law appeared to violate “State agricultural policy and the provisions of AML Article 25-AA.” A copy of the August 4, 2020 letter (“Interim Determination”) is annexed hereto as Ex. 2.

44. Specifically, DAM concluded:

⁴ The Interim Determination references a letter respondents report sending to the City dated February 5, 2020. However, the City has not located this letter, and was not aware of it, or respondents’ review of Local Law 202, until after the August 4, 2020 letter was received.

[B]anning the sale or provision of certain “forcefed” poultry products through [Local Law 202] violates the policy and goals of AML Article 25-AA and unreasonably restricts LBF and HVFG, farm operations located within a county adopted, State certified agricultural district, in possible violation of AML § 305-a(1)(a).

Id. at p. 6.

45. DAM invited the City to respond to “the issues raised” in the Interim Determination within 30 days.

46. On November 30, 2022, the City responded to DAM’s August 4, 2020 Letter to “provide our response to your assertion that Local Law 202 does not comply with Agricultural and Markets Law (“AML”) section 305-a (“section 305-a”).”⁵ A copy of the City’s letter (“City Response”) is annexed hereto as Exhibit 3.

47. The City’s letter argued that AML § 305-a did not apply to Local Law 202, and, thus, did not provide DAM with the authority to review or invalidate Local Law 202.

48. The City argued that DAM’s broad interpretation of AML §305-a was not supported by the text or legislative history of the law, or case law interpreting the statutory scheme. Rather, the law was intended to protect agricultural districts from laws, ordinances, or regulations of the local governments in which the farms are located that impact farm operations.

49. Additionally, the City argued that DAM’s conclusions about Local Law 202 violated the Municipal Home Rule, and “that to read the AML as prohibiting *any* legislation affecting farmers in New York State’s agricultural districts would improperly restrict [the] broad delegation of legislative power to municipalities.” Id.

F. DAM's December 14, 2022 Final Determination and Order

50. On or about December 14, 2022, DAM served the City with its final determination and order regarding the AML § 305-a review of Local Law 202. A copy of the Final Determination is annexed hereto as Exhibit 4.

51. The final determination barred the City from implementing Local Law 202 as allegedly violative of AML §305-a by directing that the City may not “take any action, whether direct or indirect, in the administration of or pursuant to Local Law 202, NYC Admin Code §17-1901, et seq. that would restrict HVFG's and/or LBF's ability to sell their product in the New York City market due to their on-farm gavage feeding practices...” Id.

52. DAM set forth a new and expansive reading of AML §305-a to find that it has the authority to invalidate a local law that may have some effect on certain farms, and to supersede the City's municipal home rule powers, notwithstanding that the farms are not governed by the local government enacting such law and that the law does not mandate any change in the operation of the farms.

53. According to the final determination,

AML §305-a prohibits local governments, not only from unreasonably regulating farm operations, but from imposing unreasonable restrictions on farm operations that are located within agricultural districts. Local Law 202's prohibition of the purchase, sale, or distribution of the “force-fed” products was enacted to restrict HVFG and LBF from accessing and selling its products in the City – a restriction subject to AML §305-a review.

Id.

⁵ Upon information and belief, an administrative or mailing error prevented the City from timely learning about the Interim Determination. When the Interim Determination came to the City's Continued...

54. DAM conceded that “most, if not all, of the Department's AML §305-a proceedings involving agricultural districts arise out of challenges to laws adopted by jurisdictions with farms operating within agricultural districts,” but argued that this did not necessarily indicate that DAM’s power to supersede local laws and regulations was limited to land-use restrictions or direct regulation of farm operations. Id.

55. The determination noted that it was “final, unless within 30 days the City institutes a proceeding to review the decision in the manner provided by Article 78 of the Civil Practice Law and Rules.” Id.

56. Further, respondents requested “notification within 10 days of receipt of the Final Determination and Order of the steps taken by the City to comply with the terms of the Order.” Id.

57. By letter dated December 27, 2022, the City confirmed receipt of the Final Determination and stated that the Local Law was preliminarily enjoined by Court Order and is not currently being enforced. A copy of the December 27, 2022 Letter is annexed hereto as Exhibit 5.

FIRST CAUSE OF ACTION

RESPONDENTS ACTED IN EXCESS OF JURISDICTION AND THE FINAL DETERMINATION IS *ULTRA VIRES*

58. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 58 above as if fully set forth herein.

attention, DAM agreed to an extension of time to respond. See Ex. 3.

59. Respondents directed that the City could not implement Local Law 202, which was lawfully passed by an overwhelming majority in New York City Council and was signed into law by the Mayor.

60. The Final Determination represents an overreach in excess of respondents' jurisdiction and authority.

61. Based on the text alone, it is clear that AML § 305-a is not applicable to Local Law 202.

62. New York City is located 100 miles from the Sullivan County Agricultural Districts No.1 and No. 4 in which HVFG and LBF operate their farming businesses, and thus Local Law 202 is not "a local law that 'restricts or regulate[s] farm operations within agricultural district[s]'" as set forth in AML § 305-a.

63. Nor does Local Law 202 fall within the delegation of authority to the Commissioner set forth in AML § 305-a to review and enforce "local land use regulations, ordinances or local laws pertaining to agricultural practices." AML § 305-a(1)(b).

64. The statement and purpose of Article 25-AA itself describes the risk to farm operations because of competition for land by non-agricultural development, demonstrating that it was intended to protect farming operations in agricultural districts from land use regulations and other laws or ordinances by the localities in which the farming operations are located that directly impact farming operations. AML § 300.

65. Article 25-AA was intended to "provide a locally-initiated mechanism for the protection and enhancement of New York state's agricultural land," AML § 300, and consistently places the responsibility to create, protect, and enhance agricultural districts in the *counties and localities in which they are located*.

66. It is the counties, municipalities, and county agriculture and farmland protection boards in which the agricultural district is located that approves the creation, plans for, and renewal of agricultural districts. See AML §§ 302, 303, 303-A, & 304-B.

67. Additionally, the existing judicial and administrative decisions applying AML § 305-a were challenges to local laws or actions that directly impacted farming operations and that were enacted by localities in which the agricultural district was located.

68. There are no known judicial or administrative decisions in which a local law enacted far away from the geographical contours of an agricultural district has been deemed invalid under AML § 305-a. Nor are there any known judicial or administrative decisions in which a AML § 305-a was applied to a local law that did not directly restrict or regulate farm operations within an agricultural district.

69. Rather, judicial and administrative precedent demonstrates that, until this expansive determination, AML § 305-a applied to local laws related to land use, zoning, and laws directly impacting day-to-day functioning of the farms. See, e.g., DAM list of Orders and Court Decisions, available at: <https://agriculture.ny.gov/land-and-water/orders-issued-pursuant-305> (last visited Jan. 12, 2023).

70. Indeed, DAM's own administrative guidance regarding local laws identifies AML § 305-a as applying to laws and ordinances by the localities in which the farm is located that directly affect day-to-day farming operations. See, e.g., Local Laws and Agricultural Districts: How Do They Relate?, annexed hereto as Exhibit 6, available at <https://agriculture.ny.gov/system/files/documents/2019/11/locallawsandagdistricts-howdotheyrelate.pdf> (last visited Jan. 12, 2023); see also Agricultural Districts Law: A Current Summary, annexed hereto as Exhibit 7, available at:

<https://agriculture.ny.gov/system/files/documents/2020/01/summary-agrdistrict-law.pdf> (last visited Jan. 12, 2023); DAM Website, Section 305-a Review of Restrictive Laws, Review Guidelines By Subject Matter, available at <https://agriculture.ny.gov/land-and-water/section-305-review-restrictive-laws> (last visited Jan. 12, 2023).

71. DAM's public Guidelines by Subject Matter for AML § 305-a are overwhelmingly focused on laws affected on-site operations of farms: farm worker housing, nutrient management, fencing, use of wetlands, composting, erecting greenhouses, zoning and planning laws, equine operations, junkyards, alternative energy, on-farm burning, and alcohol production. DAM Website, Section 305-a Review of Restrictive Laws, Review Guidelines By Subject Matter, available at <https://agriculture.ny.gov/land-and-water/section-305-review-restrictive-laws>.

72. Even the guidance entitled Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities describes structures, advertising, attendance by the public, and events within the agricultural district itself. A copy of the Guidelines for Review of Local Laws Affecting Direct Farm Marketing Activities is annexed hereto as Exhibit 8, and is available at: <https://agriculture.ny.gov/system/files/documents/2019/11/305-afarmmarket.pdf> (last visited Jan. 12, 2023).

73. Local Law 202 is a statute that addresses the sale or provision of force-fed products *within the City*, which is not in an agricultural district, and it does not prevent, interfere with, or otherwise have a direct impact on the actual farming practices, land use, or operations of producers, such as HVFG and LBF.

74. Respondents acted without authority and in excess of their jurisdiction in finding that AML § 305-a applies, for the first time here, to a local law regarding the sale of

certain products in a municipality because farming operations located in other counties and municipalities contend that they may be financially harmed.

75. Respondents' determination was made in violation of lawful procedure, affected by errors of law, and imposed without and in excess of jurisdiction.

SECOND CAUSE OF ACTION

THE FINAL DETERMINATION IS IN EXCESS OF JURISDICTION AND AFFECTED BY ERROR OF LAW BECAUSE IT IS INCONSISTENT WITH THE MUNICIPAL HOME RULE LAW

76. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 76 above as if fully set forth herein.

77. In directing that the City may not implement a law passed by an overwhelming majority of City Council and signed into law by the Mayor, with 81 percent approval of its citizenry, respondents violated the Municipal Home Rule Law ("MHRL").

78. The MHRL gives municipalities broad powers to regulate so long as the regulations are not inconsistent with State law, including the power to adopt and amend local laws for "the government protection, order, conduct, safety, health and well-being of persons or property therein. This provision shall include but not be limited to the power to adopt local laws providing for the regulation or licensing of occupations or businesses..." MHRL § 10(1)(ii)(a)(12).

79. Because, as described above, AML § 305-a does not apply to Local Law 202, which regulates the sale of foie gras in businesses in the City, Local law 202 does not conflict with the AML.

80. Accordingly, respondents' determination violates the MHRL and is in excess of DAM's jurisdiction and affected by error of law.

THIRD CAUSE OF ACTION

RESPONDENTS' DETERMINATION WAS ARBITRARY AND CAPRICIOUS.

81. Petitioner repeats and realleges the allegations set forth in paragraphs 1 through 81 above as if fully set forth herein.

82. In deciding whether an agency's determination was arbitrary, capricious, or an abuse of discretion, courts are limited to an assessment of whether a rational basis exists for the administrative determination and their review ends when a rational basis has been found.

83. A rational or reasonable basis for an administrative agency determination exists if there is evidence in the record to support its conclusion.

84. As described above, respondents lack the authority to invalidate Local Law 202 based upon the face of the statute, legislative history, respondents' prior determinations and administrative guidance, and the judicial decisions applying AML § 305-a.

85. Glaringly, respondents' own administrative guidance interprets AML 305-a as applying to laws or ordinances by local governments that affect the day-to-day, direct operations of farms within the localities' own territorial borders.

86. Given the absolute lack of authority for their newly expansive reading of AML § 305-a to apply to a law that does not regulate farm operations and which was made by a municipality outside of the agricultural district in which the complainant farms are located, there is no rational basis for respondents' determination that they have the authority to invalidate Local Law 202 under AML § 305-a.

87. Respondents' determination that Local Law 202 "unreasonably restricts HVFG and LBF's farm operations and on-farm practices" is arbitrary and capricious on the merits.

88. First, respondents incorrectly stated that no public health or safety reason for Local Law 202 exists. This is contrary to the legislative record, which contains testimony and statements from lawmakers regarding the public health concerns of ingesting foie gras, which derives 85% of its calories from fat and may raise an individual's risk of Alzheimer's and Huntington's disease, Type 2 diabetes, and heart disease.

89. Second, respondents dismissed the extensive animal welfare goals raised again and again in evidence before City Council in a single conclusory remark that the City "believes force-feeding of ducks to be a cruel on-farm practice." Ex. D at p. 1.

90. On the contrary, the legislative history, and public records, contain statements by major veterinary associations, animal welfare organizations, consumers, retail store owners, restaurant owners, and other concerned citizens describing gavage as traumatic, cruel, and physically devastating to the birds.

91. The only testimony in support of gavage came from employees or owners of HVFG and LBF or those who financially benefit from them.

92. Respondents failed to explain their wholesale rejection of this evidence and the animal welfare concerns that motivated the law, and their uncritical acceptance of HVFG and LBF's self-interested statements.

93. Third, there is no rational basis for respondents' finding that Local Law 202's potential financial effect on HVFG and LBF will "restrict" their "on-farm practices."

94. HVFG and LBF sell products to a variety of companies and third-party distributors located throughout the country. Indeed, upon information and belief, HVFG and LBF are two of only three commercial producers of foie gras in the United States.

95. Foie gras is simply one of many duck products produced and sold by HVFG and LBF. None of the other products sold by HVFG and LBF require force-feeding of animals to produce, and all of the other duck products produced by HVFG and LBF could be sold in New York City if Local Law 202 were to be implemented.

96. Local Law 202 only applies to the sale of foie gras in New York City. If it were permitted to be implemented, it would not affect HVFG or LBF's ability to sell foie gras in any other locality of New York State, nor in any part of the United States other than California, which has currently also banned the sale of force-fed products.

97. HVFG and LBF allege only that they may be negatively financially impacted by Local Law 202, and respondents fail to explain, in the absence of any precedent, their finding that financial impact is sufficient to find a restriction of "on-farm practices" under AML § 305-a.

98. Indeed, even if financial impact were sufficient, respondents fail to explain why they credit HVFG and LBF's assertions regarding economic impact given that both entities "use all parts of the duck," produce numerous products other than foie gras, and would not be prevented from selling foie gras in any other locality in New York State or, other than California, the United States.

99. For all the reasons enumerated above in this cause of action, Respondent's determination is arbitrary, capricious, contrary to law, an abuse of discretion, made in violation of lawful procedure, affected by errors of law, and imposed without and in excess of jurisdiction.

CONCLUSION

WHEREFORE, Petitioner respectfully requests that this court enter a judgment:

(i) declaring that respondents lack the authority to review Local Law 202, and that the Final Determination is arbitrary, capricious, contrary to law, an abuse of discretion, made in violation of lawful procedure, affected by errors of law, and imposed without and in excess of jurisdiction, and annulling such determination; and

(ii) for such other and further relief as the court may deem proper.

Dated: New York, New York
January 13, 2023

Respectfully submitted,

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