[Date]

Commissioner Richard A. Ball
Scott Wyner, General Counsel
New York State Department of Agriculture & Markets
10B Airline Drive
Albany, New York 12235

Jennifer Levy, First Deputy Attorney General
Anna Brower, Chief of Staff
Office of the New York State Attorney General
The Capitol
Albany, New York 12224

Dear Commissioner Ball, General Counsel Wyner, First Deputy Attorney General Levy, and Chief of Staff Brower:

On behalf of our members and supporters, we write with great concern about the State's position in *The City of New York v. Richard A. Ball et al.*, Case No. 900460-23 (Albany Cty. Sup. Ct) [hereinafter, *City of New York*]. This position—which constitutes a novel and overbroad interpretation of New York's Agriculture and Markets Law 305-a ("AML § 305-a")—**could imperil virtually *any* municipal effort to address the climate, labor, health, safety, or animal-welfare consequences of agricultural production**, a sector that accounts for one-third of human-caused greenhouse gas emissions, directly implicates the health and safety of millions, and employs tens of thousands of New Yorkers.

As detailed below, the State's interpretation is contrary to plain statutory text, legislative intent, and the uniform past practice of the New York State Department of Agriculture & Markets ("Department"). For these reasons, we urge the State to abandon its defense of the Department in *City of New York* and, accordingly, decline to perfect the Department's appeal.

In 2019, the City of New York enacted Local Law 202, which bans the sale and distribution of foie gras within the City. After receiving complaints from two foie gras producers, the Department enjoined Local Law 202 pursuant to AML § 305-a, which prohibits local governments from "unreasonably restrict[ing] or regulat[ing] farm operations within agricultural districts . . . unless it can be shown that the public health or safety is threatened." In doing so, the Department adopted an unprecedented and sweeping view of its authority to invalidate local laws. According to the Department, AML § 305-a empowers the agency to invalidate local laws *anywhere* in the state, even well outside agricultural districts, whenever those laws have even *indirect* impacts on farming operations—including on their distributers' ability to sell farm products elsewhere in the State—or are intended merely to *influence* on-farm practices in some way. *See* Ex. A (Department's Final Determination and Order).

In subsequent litigation, the State adopted the Department's excessive assertion of authority. Specifically, the State argued: (1) that AML § 305-a sweeps within its ambit all local

laws that "directly or indirectly impact[] farm operations"; (2) that AML § 305-a's text "is [not] geographically limiting"; and (3) that the Department is empowered to invalidate local laws that are "meant to effect [*sic*] [] farming practices and operations" in some fashion, including by imposing conditions on "access to [a] market" that "induce[]" farms to "abandon[]" certain practices. Ex. B at 13 (The Department's Memorandum of Law in Support of Respondents' Answer to Verified Petition in *City of New York*).

After briefing and oral argument, on August 3, 2023, the Albany County Supreme Court annulled the Department's Final Determination as arbitrary and capricious, concluding that the Department's findings were based on an insufficient review of Local Law 202's legislative history. *City of New York*, 194 N.Y.S.3d 903, 913 (N.Y. Sup. Ct. 2023). The court also remitted the matter to the agency for further proceedings consistent with its opinion. *Id*. Shortly thereafter, the Department noticed its appeal to the Appellate Division, Third Department.

We urge the State to abandon its interpretation of AML § 305-a—and to decline to perfect the Department's appeal in *City of New York*—for three reasons:

First, the State's application of AML § 305-a in this case stretches the provision beyond its breaking point, as a statewide prohibition on "indirect" local regulation of farms has no limiting principle—and would dramatically undermine municipalities' ability to legislate in the public interest. Indeed, any number of local laws promulgated outside of agricultural districts could have *some* indirect impact on farm operations' financial viability. The State's interpretation imperils otherwise lawful municipal efforts to reduce the climate and other environmental impacts of agriculture and to promote just labor practices—efforts that are consistent with the State's policy of addressing the climate crisis by prioritizing good-paying jobs and investing in disadvantaged communities. The State's position in *City of New York* could have far-reaching consequences, upsetting the balance of power between the Department and localities, unlawfully and unnecessarily curtailing localities' ability and right to protect their citizens' health and safety through appropriate legislation.

Second, the State's assertion of authority is untethered from AML § 305-a's plain text and purpose. Like its neighboring provisions in New York's Agricultural Districts Law ("Article 25-AA"), AML § 305-a focuses squarely on activity and regulation occurring "within agricultural districts."[1] *See, e.g.*, AML §§ 302 (setting forth local governance in agricultural districts), 303

[1] "Agricultural districts" are county-administered areas containing land that has been specially designated for agricultural use by a county legislative body. The purpose of this designation is to protect the ecological and economic viability of agricultural lands, including by providing certain benefits to landowners within agricultural districts and preventing non-agricultural development within agricultural districts. *See generally* Article 25-AA. As of 2021, agricultural districts statewide contained 9,162,250 acres of land, encompassing 26,227 farms across 53 counties. *See* DAM, Agricultural Districts SEQRA Short Form (Mar. 2022), https://agriculture.ny.gov/system/files/documents/2022/04/agriculturaldistrictspresentation.pdf; *see also* Cornell University Geospatial Information Repository, *Agricultural Districts, New York, 2023*, https://cugir.library.cornell.edu/catalog/cugir-009010 (last visited Nov. 16, 2023) (showing the geographic boundaries of all agricultural districts, which correspond to tax parcel data).

(providing for the creation of an agricultural district), 304-B (detailing the Department's reporting requirements concerning agricultural districts); *see also* Loka Ashwood et al., EMPTY FIELDS, EMPTY PROMISES: A STATE-BY-STATE GUIDE TO UNDERSTANDING AND TRANSFORMING THE RIGHT TO FARM 171 (University of North Carolina Press 2023) (noting that New York "uniquely centers its law on agricultural districts"). This focus makes sense given Article 25-AA's stated purpose "to provide a *locally-initiated* mechanism for the protection and enhancement of New York state's *agricultural land*." AML § 300 (emphasis added).[2] By disregarding AML § 305-a's clear geographic focus on agricultural lands—and opportunistically quoting inapposite legislative history—the State ignores the law's text, context, and purpose.

Third, the State's interpretation of AML § 305-a wildly departs from past practice. Critically, the Department has *never* arrogated to itself the authority to invalidate laws enacted outside of agricultural districts, nor has it attempted to strike down local laws that purportedly affect farms "indirectly." Rather, the Department's past decisions to enjoin local laws pursuant to AML § 305-a uniformly involve direct regulations of on-farm practices and operations enacted by localities where farms are situated. *See* Ex. C at 9-11 (Memorandum of Law in Support of the Verified Petition in *City of New York*). Even if AML § 305-a were "susceptible to different interpretations"—and it is not—the Department's "past practice [must be] given great weight in determining the law's meaning." *Wayne Ctr. for Nursing & Rehab., LLC v. Zucker*, 197 A.D.3d 1409, 1416 (3d Dep't 2021), *lv. to appeal denied*, 37 N.Y.3d 919 (2022). Here, only one conclusion can be drawn from the Department's unbroken past practice: the Department has stretched AML § 305-a well beyond its intended scope.

In sum, the State's position in *City of New York* could have deeply disruptive consequences, including derailing critical local action to combat climate change, unjust labor practices, and threats to public health and safety and animal welfare. The State encourages and depends on the partnership of local governments to achieve its climate, environmental, and other goals, and this overly broad interpretation significantly undermines that partnership.

We welcome the opportunity to further discuss this matter with you. Thank you for your attention to this important issue.

Respectfully,

CUNY Urban Food Policy Institute
Earthjustice
Food Chain Workers Alliance

[2] Although the Department selectively quotes legislative history to support its geographically unbounded reading, *see* Ex. A at 5; Ex. B at 13, the legislature plainly intended AML § 305-a to be *temporally*—not geographically—unlimited, *see Inter-Lakes Health, Inc. v. Town of Ticonderoga Town Bd.*, 13 A.D.3d 846, 848 (3d Dep't 2004) (holding that the legislative history "indicates that [1997 amendments to AML § 305-a were] intended to eliminate" a loophole that "preclude[d] the Department from intervening in cases *where the restrictive law or regulation was enacted prior to the creation of the agricultural district*'") (quoting Senate Mem. in Support, Bill Jacket, L. 1997, ch. 357, at 13–14) (emphasis in original).

Natural Resources Defense Council
Real Food Media