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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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HILLSIDE DAIRY INC. ET AL. *v.* LYONS, SECRETARY, CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 01–950. Argued April 22, 2003—Decided June 9, 2003*

In most of the country, but not California, the minimum price paid to dairy farmers producing raw milk is regulated pursuant to federal marketing orders, which guarantee a uniform price for the producers, but through pooling mechanisms require the processors of different classes of dairy products to pay different prices. California has adopted a similar, although more complex, program to regulate the minimum prices paid by California processors to California producers. Three state statutes create California's milk marketing structure: 1935 and 1967 Acts establish milk pricing and pooling plans, while a 1947 Act governs the composition of milk products sold in the State. Under the state scheme, California processors of fluid milk pay a premium price (part of which goes into a price equalization pool) that is higher than the prices paid to producers. During the 1990's, it became profitable for some California processors to buy raw milk from out-of-state producers. In 1997, the California Department of Food and Agriculture amended its regulations to require contributions to the price equalization pool on some out-of-state purchases. Petitioners, out-of-state dairy farmers, brought these suits, alleging that the 1997 amendment unconstitutionally discriminates against them. Without reaching the merits, the District Court dismissed

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*Together with No. 01–1018, *Ponderosa Dairy et al.* v. *Lyons, Secretary, California Department of Food and Agriculture, et al.,* also on certiorari to the same court.

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both cases. The Ninth Circuit affirmed, holding, *inter alia*, that a 1996 federal statute immunized California's milk pricing and pooling laws from Commerce Clause challenge, and that the individual petitioners' Privileges and Immunities Clause claims failed because the 1997 amendment did not, on its face, create classifications based on any individual's residency or citizenship.

Held:

1. California's milk pricing and pooling regulations are not exempted from Commerce Clause scrutiny by §144 of the Federal Agriculture and Reform Act of 1996, 7 U. S. C. §7254, which provides: "Nothing in this Act . . . shall be construed to . . . limit the authority of . . . California . . . to . . . effect any law . . . regarding . . . the percentage of milk solids or solids not fat in fluid milk products sold . . . in [that] State . . . ; or . . . the labeling of such fluid milk products . . . ." Section 144 plainly covers California laws regulating the composition and labeling of fluid milk products, but does not mention pricing laws. This Court will not assume that Congress has authorized state regulations that burden or discriminate against interstate commerce unless such an intent is clearly expressed. *South-Central Timber Development, Inc.* v. *Wunnicke,* 467 U. S. 82, 91. Because §144 does not express such an intent with respect to California's pricing and pooling laws, the Ninth Circuit erred in relying on that section to dismiss petitioners' Commerce Clause challenge. Pp. 5–7.

2. The Ninth Circuit's rejection of the individual petitioners' Privileges and Immunities Clause claims is inconsistent with *Chalker* v. *Birmingham & Northwestern R. Co.,* 249 U. S. 522, 527, in which this Court held that the practical effect of a Tennessee tax—which did not on its face draw any distinction based on citizenship or residence, but did impose a higher rate on persons having their principal offices out of State—was discriminatory, given that an individual's chief office is commonly in the State of which he is a citizen. In this case as well, the absence of an express statement in the California laws and regulations identifying out-of-state residency or citizenship as a basis for disparate treatment is not a sufficient basis for rejecting petitioners' claim. In so holding, this Court expresses no opinion on the merits of that claim. Pp. 7–8.

259 F. 3d 1148, vacated and remanded.

STEVENS, J., delivered the opinion of the Court, Parts I and III of which were unanimous, and Part II of which was joined by REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ. THOMAS, J., filed an opinion concurring in part and dissenting in part.