

FEB 13 2023

SENATE CONCURRENT RESOLUTION

URGING THE STATE TO PURSUE AN EXEMPTION TO THE COMMERCE CLAUSE
OF THE UNITED STATES CONSTITUTION FOR AGRICULTURAL PRODUCE
GROWN OR RAISED IN THE STATE OF HAWAII.

1 WHEREAS, Hawaii imports more than eighty-five percent of
2 its food and is considered highly vulnerable in issues of food
3 security; and
4

5 WHEREAS, climate change significantly increases this
6 vulnerability with sea level rise and intensified weather
7 patterns in the Pacific, including unpredictable seas and
8 hurricanes; and
9

10 WHEREAS, the Merchant Marine Act of 1920, commonly known as
11 the Jones Act, requires that all goods that are shipped within
12 the United States be transported by United States-flagged
13 vessels that are primarily operated by United States citizens;
14 and
15

16 WHEREAS, much of Hawaii's cargo shipments require marine
17 transportation and are therefore subject to the Jones Act; and
18

19 WHEREAS, the requirements of the Jones Act create an
20 artificial scarcity of available ships, thus increasing
21 transportation costs; and
22

23 WHEREAS, in addition to higher shipping costs, local
24 farmers must contend with inflated costs to buy or lease land,
25 and high water rates, as well as one of the highest costs of
26 living in the country; and
27

28 WHEREAS, these factors make the costs of farming in Hawaii
29 the highest in the nation, creating an almost insurmountable
30 hurdle for local farmers and an unfair advantage for
31 agricultural producers based in the continental United States;
32 and



1 WHEREAS, the United States Department of Agriculture
2 defines small farms as those having no more than five hundred
3 acres; and
4

5 WHEREAS, the latest Hawaii Department of Agriculture
6 surveys reveal that less than four percent of farms in Hawaii
7 surpass that threshold, with the vast majority, ninety-six
8 percent, being very small farms; and
9

10 WHEREAS, fifty-eight percent of the small farms in Hawaii
11 average sixteen or less acres in size; and
12

13 WHEREAS, the average small farm in Hawaii incurs losses of
14 almost \$10,000 annually due to the high costs of farming; and
15

16 WHEREAS, the United States Constitution was written in 1787
17 at the Constitutional Convention, ratified in subsequent state
18 conventions, and took effect in 1789; and
19

20 WHEREAS, Article I, section 8, clause 3 of the United
21 States Constitution, commonly referred to as the Commerce
22 Clause, gives the United States Congress the power "to regulate
23 commerce with foreign nations, and among the several states, and
24 with the Indian tribes"; and
25

26 WHEREAS, historically, courts have interpreted the Commerce
27 Clause to include a prohibition against states passing
28 legislation that discriminates against or excessively burdens
29 interstate commerce by, for example, creating an unfair
30 advantage for their own producers over those of any other state;
31 and
32

33 WHEREAS, the effects of the Commerce Clause on individual
34 states in the sector of agriculture is currently a highly
35 contested aspect of the law, due to the dominance of a small
36 number of national corporate producers in all states; and
37

38 WHEREAS, despite this nation's apparent desire for federal
39 laws that prevent discrimination against interstate commerce,
40 the United States Supreme Court has not yet addressed
41 discrimination or undue influence on interstate commerce caused
42 by federal law; and



S.C.R. NO. 24

1 WHEREAS, despite the fact that, on July 9, 2021, President
2 Joseph R. Biden signed Executive Order No. 14036, entitled
3 "Executive Order on Promoting Competition in the American
4 Economy," which, among other things, sought to create a fairer,
5 more resilient meat and poultry industry by identifying
6 recurring unfair, unjustly discriminatory, or deceptive
7 practices, no federal law or executive order has yet addressed
8 the economic disparities experienced by vegetable and fruit
9 growers; and

10
11 WHEREAS, the intent behind the Commerce Clause was never to
12 favor national corporate agriculture at the expense and survival
13 of small local farms, but rather to ensure robust, diverse
14 market competition; and

15
16 WHEREAS, at the time the United States Constitution was
17 written, Hawaii was still an independent nation and, hence,
18 Congress did not, nor has it currently, considered the
19 implications of the Commerce Clause on the Hawaiian Islands with
20 regard to current and future food security needs, the extra
21 burden of trans-ocean and intra-state ocean shipping, and
22 economic disparities; and

23
24 WHEREAS, an exemption from the Commerce Clause would help
25 to restore balance and fair markets to small agricultural
26 producers in the State of Hawaii; now, therefore,

27
28 BE IT RESOLVED by the Senate of the Thirty-second
29 Legislature of the State of Hawaii, Regular Session of 2023, the
30 House of Representatives concurring, that the Governor, the
31 Legislature of the State of Hawaii, and its representatives in
32 Congress are urged to pursue an exemption to the Commerce Clause
33 of the United States Constitution for agricultural produce grown
34 in Hawaii; and



S.C.R. NO. 24

1 BE IT FURTHER RESOLVED that certified copies of this
2 Concurrent Resolution be transmitted to all members of Hawaii's
3 congressional delegation, the Governor, the Attorney General,
4 the Chairperson of the Board of Agriculture, and the Chair of
5 the Board of Trustees of the Office of Hawaiian Affairs.
6
7
8

OFFERED BY: _____

