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## HOUSE 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  
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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  
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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  
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16           WHEREAS, much of Hawaii's cargo shipments require marine  
17 transportation and are therefore subject to the Jones Act; and  
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19           WHEREAS, the requirements of the Jones Act create an  
20 artificial scarcity of available ships, thus increasing  
21 transportation costs; and  
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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  
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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  
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1           WHEREAS, the United States Department of Agriculture  
2 defines small farms as those having no more than five hundred  
3 acres; and

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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

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

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

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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

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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

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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

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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



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

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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

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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

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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,

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



# H.R. NO. 199

1 BE IT FURTHER RESOLVED that certified copies of this  
2 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.  
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OFFERED BY: *Miss E. Linn*

MAR 10 2023

