NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 25-3515

BIAZZO DAIRY PRODUCTS, INC.,
Appellant

v.

THE PENNSYLVANIA MILK MARKETING BOARD;
COMMONWEALTH OF PENNSYLVANIA

On Appeal from the United States District Court for the
Middle District of Pennsylvania
(District Court No. 1:25-cv-00506)
District Court Judge: Honorable Jennifer P. Wilson

Submitted Pursuant to Third Circuit L.A.R. 34.1(a)
September 18, 2026

(Filed: September 24, 2026)

Before: HARDIMAN, BIBAS, and RENDELL, *Circuit Judges*.

OPINION[*]

[*] This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

RENDELL, *Circuit Judge*.

Plaintiff-Appellant Biazzo Dairy Products, Inc. challenges the District Court's grant of Defendant-Appellees' motion to dismiss in this dormant Commerce Clause action. For the reasons that follow, we will affirm the District Court's order dismissing the amended complaint.

I.

A. Statutory Background

The Pennsylvania General Assembly enacted the Milk Producers' Security Act (the "Act") to "provide security for dairy farmers and cooperatives" by ensuring they "receive prompt payment" from milk dealers. 31 P.S. § 626.2. The Act defines a milk dealer as "[a]ny person who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, within or without the Commonwealth, whether on behalf of the person or others, or both." *Id.* § 626.4. Milk dealers must file with the Pennsylvania Milk Marketing Board[1] (the "Board") an annual "bond equal to a minimum of 75% of the highest aggregate amount owed by the milk dealer to all producers for a 40-day period during the preceding 12 months." *Id.* § 626.7(c)(1). The Board provides that "amount owed" means "actual amount the milk dealer lawfully paid the producer." 7 Pa. Code § 151.9(b)(2). Milk dealers may also petition the Board to file a bond in a smaller amount and to participate in a security fund as a vested milk dealer. 31 P.S. § 626.7(c)(3). Milk dealers participating in the security fund must pay the Board monthly based on all milk purchased from

[1] The Pennsylvania Milk Marketing Board was renamed the Pennsylvania Milk Board. 31 P.S. § 700j-103.

producers during the prior month, and this money is credited to the account of the milk dealer. *Id.* § 626.9(a).

B. Factual Background

Biazzo Dairy Products, Inc. ("Biazzo"), a New Jersey corporation, manufactures and distributes cheese products. Because Biazzo purchases milk from Pennsylvania farmers, the Board informed Biazzo that it qualifies as a milk dealer under the Act and thus must post a bond to continue doing business in Pennsylvania. Biazzo posted the bond but petitioned the Board for an exemption from future bonds, urging the bond requirement violated the Commerce Clause by placing an impermissible burden on Biazzo. Further, Biazzo contended it never "owed" any amount because of its long-standing policy of paying all shipments on the first business day of receipt. Biazzo filed a complaint in federal court seeking declaratory and injunctive relief to release it from the bond requirement. Biazzo later agreed with the Board that it would participate in the security fund. Biazzo amended its complaint in light of this agreement.

Biazzo alleges that, as a result of the Act, it terminated ten employees and is less competitive than manufacturers that purchase milk from other states. In Count One, Biazzo alleges that provisions of the Act and the Board's regulation defining "owed" violate the dormant Commerce Clause of the United States Constitution facially and as applied. In Count Two, Biazzo alleges that the Board's regulation defining "owed" is unconstitutional and should be given its "ordinary meaning." App. 76. In Count Three, Biazzo states that it seeks declaratory judgment that: (1) the Act violates the dormant Commerce Clause; (2) Biazzo is not subject to the Act's requirements because it pays upon delivery; (3) Biazzo is not a milk dealer for the purposes of the Act; and (4) the Act violates the Equal Protection Clause of the Fourteenth Amendment.

The District Court granted the Commonwealth of Pennsylvania and the Board's motion to dismiss. As to Count One, the District Court found Biazzo failed to state a dormant Commerce Clause claim because "Pennsylvania milk dealers shoulder the same burden as Biazzo, so the bond requirement affects commerce, not interstate commerce." App. 13. The District Court construed Count Two as an additional dormant Commerce Clause claim, rather than a challenge to the Board's authority to define "owed." Thus, the District Court dismissed Count Two for the same reasons as Count One. The District Court dismissed Count Three for three reasons. First, Biazzo failed to state a cause of action. Second, even if the relief sought were properly articulated, Biazzo's dormant Commerce claim fails on the merits. Last, Count Three asserts constitutional violations without offering supporting allegations.

Because Biazzo's as applied challenge failed, the District Court did not consider the facial challenge. *See United States v. Mitchell*, 652 F.3d 387, 415 (3d Cir. 2011) (finding a statute constitutional as applied to the defendant and, thus, not facially unconstitutional).

II.[2]

On appeal, Biazzo essentially raises two issues.[3] First, whether the District Court properly concluded that Biazzo failed to show a violation of the dormant Commerce Clause. Second, whether the Board's interpretation of "owed" is ultra vires. We will address each in turn.

A. Dormant Commerce Clause

The Commerce Clause provides that "Congress shall have Power . . . To regulate Commerce . . . among the several States." U.S. Const., art. I, § 8, cl. 3. "This affirmative grant of authority to Congress also encompasses an implicit or 'dormant' limitation on the authority of the States to enact legislation affecting interstate commerce." *Healy v. Beer Inst.*, 491 U.S. 324, 326 n.1 (1989) (citation modified). Thus, the "dormant Commerce Clause prohibits the states from imposing restrictions that benefit in-state economic interests at out-of-state interests' expense." *Cloverland-Green Spring Dairies, Inc. v. Pa. Milk Mktg. Bd.*, 298 F.3d 201, 210 (3d Cir. 2002).

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[2] The District Court had jurisdiction under 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. We review the grant of a motion to dismiss de novo. *Owner Operator Indep. Drivers Ass'n, Inc. v. Pa. Tpk. Comm'n*, 934 F.3d 283, 290 n.7 (3d Cir. 2019). A plaintiff must allege "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)).

[3] Biazzo's "Statement of Issues Presented for Review" includes the issue of whether it should be considered a milk dealer. Biazzo failed to offer any analysis in support of this assertion and thus forfeited this issue. *See* Fed. R. App. P. 28(a)(8) (providing that appellant's argument "must contain . . . appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies").

In a dormant Commerce Clause challenge, we ask "whether the state regulation at issue discriminates against interstate commerce 'either on its face or in practical effect.'" *Id.* (quoting *Maine v. Taylor*, 477 U.S. 131, 138 (1986)). If so, the regulation is per se invalid unless the state "can demonstrate, under rigorous scrutiny, that it has no other means to advance a legitimate local interest." *C & A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 392 (1994). If not, we apply the *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), balancing test. *See Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff*, 669 F.3d 359, 372 (3d Cir. 2012). Under this test, "if the state regulation does not discriminate against interstate commerce, but 'regulates even-handedly' and merely 'incidentally' burdens it, the regulation will be upheld unless the burden is 'clearly excessive in relation to the putative local benefits.'" *Cloverland-Green Spring Dairies*, 298 F.3d at 211 (quoting *Pike*, 397 U.S. at 142). For the purposes of *Pike* balancing, we are only concerned with regulations that create "incidental burdens on interstate commerce" rather than regulations that burden in-state and out-of-state commerce equally. *Instructional Sys., Inc. v. Computer Curriculum Corp.*, 35 F.3d 813, 826 (3d Cir. 1994) (citation modified). "Once it is clear no such discrimination has been alleged, the inquiry as to the burden on interstate commerce should end," and "an analysis of the putative local benefits of the [regulation] is unnecessary." *Id.* at 827 (citation modified).

Here, Biazzo contends that the District Court improperly dismissed its dormant Commerce Clause claim without conducting the *Pike* balancing test. But, the District Court did use the *Pike* balancing test. It first considered "whether the law burdens interstate commerce by placing differing burdens on in-state and out-of-state firms." App. 20. Answering no, the District Court properly ended the inquiry.

We find no error in the District Court's reasoning.[4] We accept Biazzo's allegations that the Act's requirements have caused heavy burdens. But, these allegations fail to show Pennsylvania milk dealers face different burdens. In fact, Biazzo's appellate brief concedes that the statute "impos[es] the burden on every state in addition to its own." Appellant Br. at 19. The text of the Act necessitates the same conclusion, as its requirements apply to "**[a]ny person** who purchases or receives or handles on consignment or otherwise milk within the Commonwealth, for sale, shipment, storage, processing or manufacture, **within or without the Commonwealth**, whether on behalf of the person or others, or both." 31 P.S. § 626.4 (emphasis added). Because it is clear and uncontested that there is no discrimination against interstate commerce, the *Pike* inquiry ends.

B. Ultra Vires

Biazzo urges that "amount owed" means amount presently due. Thus, Biazzo maintains, it never owes anything because it pays for milk upon delivery. As noted above, the District Court did not reason through this issue. To evaluate Biazzo's contention that

[4] We do note that the District Court did not address a threshold question for a dormant Commerce Clause analysis: whether, as a matter of law, "a state is regulating, rather than participating, in a market." *Tri-M Grp., LLC v. Sharp*, 638 F.3d 406, 417 (3d Cir. 2011). We confirm that the Commonwealth and Board are regulating the market rather than participating in it, particularly because their "involvement clearly reflects a governmental interest in setting [dairy sales] policy, rather than merely impacting the state's own participation in the market." *Id.* at 422. This omission was harmless.

the Board's interpretation of "owed" is ultra vires,[5] we must predict how the Pennsylvania Supreme Court would understand the term because the Act does not define it. *See Nationwide Mut. Ins. Co. v. Buffetta*, 230 F.3d 634, 637 (3d Cir. 2000).[6] Pennsylvania courts' "foundational premise is to bring about the Legislature's intent in enacting the statute." *City of Philadelphia v. J.S.*, 353 A.3d 566, 573 (Pa. 2026) (citation modified). To achieve this goal, the Pennsylvania courts examine the plain language of a statute. *Id.* To determine the plain meaning, we consider the context and give words their "common and approved usage." *Id.* (citation modified). An agency's interpretation of an ambiguous statute is entitled to deference, but no deference applies when the statute is clear. *Crown Castle NG E. LLC v. Pa. Pub. Util. Comm'n*, 234 A.3d 665, 678 (Pa. 2020).

Assuming arguendo that we should not defer to the Board's interpretation, we predict "owed" would still be afforded the same meaning the Board adopted: "the actual amount the milk dealer lawfully paid the producer." 7 Pa. Code § 151.9(b)(2). The Security Act's purpose is to "to protect producers and cooperatives against loss of payment for milk." 31 P.S. § 626.2. It achieves this purpose by requiring milk dealers to file a "bond equal to a minimum of 75% of the highest aggregate **amount owed** by the milk dealer to all producers for a 40-day period during the preceding 12 months." *Id.*

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[5] Biazzo also contends this interpretation is a deprivation of due process and a chill on interstate commerce but fails to develop these points.

[6] Biazzo urges that we need not predict how the Supreme Court of Pennsylvania would decide because it has otherwise held "owed" is "synonymous" with "due." Appellant Br. at 22 (citing *Vogt v. Birch*, 148 A. 906, 907 (Pa. 1930)). Neither *Vogt*, nor the other cases Biazzo provides, concerned the Act at issue. We must consider context to determine a word's meaning. *City of Philadelphia v. J.S.*, 353 A.3d 566, 573 (Pa. 2026).

§ 626.7(c)(1) (emphasis added). The Merriam Webster definition of "owe," is "to be under obligation to pay or repay in return for something received." *Owe*, The Merriam-Webster Dictionary (Sep. 3, 2026), https://www.merriam-webster.com/dictionary/%5Bowed%5D. There is no temporal aspect to the definition. The amount the dealer was "under obligation to pay" during a 40-day period would likely be the amount actually paid during that period. Further, "[d]uring the preceding 12 months," qualifies "amount owed" and shows we should consider the amount owed during that period of time rather than the point of time Biazzo prefers. This interpretation forwards the statutory purpose of protecting producers from purchasers' potential default. Adopting Biazzo's preferred interpretation would allow dealers to evade the bond requirement based on the typical timing of their payment. This would not allow the Board to protect producers if a company deviated from its typical payment schedule and defaulted.

Further, considering the context of the entire statute, the Act provides that "title to milk shall be transferred from the producer to the milk dealer at the point of shipment of the milk." 31 P.S. § 626.4a(b). So, Biazzo incorrectly claims that it never has a current debt since it renders payment immediately upon delivery. If Biazzo has title to the milk at the point of shipment, rather than delivery, then it would "owe" payment during the period from shipment to delivery. Thus, Biazzo has failed to show both that the Board's definition was ultra vires and that it "owes" nothing under its preferred interpretation.

III.

For these reasons, we will affirm the District Court's dismissal of the amended complaint.