



Statement of the American Farm Bureau Federation

TO THE HOUSE OF REPRESENTATIVES COMMITTEE ON AGRICULTURE

**An Examination of the Implications of Proposition 12
July 23rd, 2025**

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Chairman Thompson, Ranking Member Craig, and members of the Committee, my name is Travis Cushman. I am the Deputy General Counsel, Litigation and Public Policy at the American Farm Bureau Federation (AFBF), and I am honored to provide this testimony on behalf of Farm Bureau members across this country.

Along with the National Pork Producers Council, I spent the better part of four years examining the harmful effects of California Proposition 12. My legal efforts on the case helped elevate it to the Supreme Court. Our legal challenge was based on a Constitutional doctrine called the Dormant Commerce Clause. The doctrine states that, because Congress has the power to regulate interstate commerce, states do not. In short, states are prohibited from substantially burdening interstate commerce through their own laws and regulations.

Unfortunately, the high court's decision is so convoluted, so confusing, and so contradictory that no one can (honestly) articulate the state of the Dormant Commerce Clause or how courts should proceed with similar claims. As you know, you need five of the nine justices to agree with you to win a case. Six justices agreed with our legal theory. Five agreed that we had established enough facts to win on that legal theory. An easy win, right?

Not quite. In a fractured 5-4 decision, three justices found that the Constitution did not support our reading of the Dormant Commerce Clause, and two justices agreed with our reading but found we had not alleged sufficient facts. But one of the justices who disagreed with our theory of the Dormant Commerce Clause wrote separately to target the justices who found we had not alleged the correct factual predicate, arguing that we clearly had done so if such a legal theory was correct. And then four justices dissented, agreeing with our legal theory and factual pleadings.

The makeup of the four dissenting justices was also remarkable. In 2023, Chief Justice Roberts dissented in four cases and Justice Kavanaugh dissented in only two cases. A quarter of Chief Justice Roberts' and half of Justice Kavanaugh's dissents were in our case. In addition to Justice Alito, Justice Jackson also joined the dissent. This is the only case where Justice Jackson has ever been in the dissent with Chief Justice Roberts. Justice Jackson has been in the dissent with Justice Kavanaugh only one other time, and with Justice Alito only two other times.

And again I want to emphasize: six justices from across the ideological spectrum agreed that the Constitution recognizes the threat of states balkanizing the country's markets and protects those out-of-state interests, and five agreed that we had established such a claim. And that's what leaves us in the legal quagmire we are here to address today.

One thing is clear from the case: Congress is the branch with responsibility now to address the problem of states imposing their production laws on other states. The ball is in your court.

Below I discuss the history of the problem, the case law, and the proposed legislation.

Ballot Initiatives that Attack Animal Agriculture

California Proposition 12 (Prop 12) was a ballot initiative promoted by animal rights groups that passed in 2018. Voters were offered the following choice:

| | |
|--|-----------------------|
| PROPOSITION 12 | |
| ESTABLISHES NEW STANDARDS FOR CONFINEMENT OF SPECIFIED FARM ANIMALS; BANS SALE OF NONCOMPLYING PRODUCTS. INITIATIVE STATUTE. Establishes minimum requirements for confining certain farm animals. | |
| Prohibits sales of meat and egg products from animals confined in noncomplying manner. Fiscal Impact: Potential decrease in state income tax revenues from farm businesses, likely not more than several million dollars annually. State costs up to \$10 million annually to enforce the measure. | |
| YES | <input type="radio"/> |
| NO | <input type="radio"/> |

(Highlights added). It is hard to blame an average voter for checking either “yes” or “no,” based on this information alone. Left unsaid was that the “minimum requirements” established were not created based on the generally-accepted views of experts in animal welfare and human safety or the experience of farmers. In fact, at the time, nearly no farms followed the standards set forth by Prop 12. Also unsaid was that nearly no pork comes from California, meaning that farms

across the country would become subject to regulations and inspections based on California law despite that California had no domestic pork industry.

Relying on ballot initiatives in this way—instead of engaging in the legislative process, where factfinding and deliberative debate occurs—has become a common tactic of animal rights groups to enact laws that attack animal agriculture. For example:

- California Proposition 2 was passed in 2008¹ and set new standards for egg laying hens that resulted in smaller and mid-sized farms closing and losing market share to larger, vertically integrated operations.
- Massachusetts Question 3 passed in 2016 as a ballot initiative that similarly set production standards for farms across the country for sows, veal calves, and egg-laying hens.
- Sonoma County Measure J was on the ballot in 2024 and sought to ban and phase out Concentrated Animal Feeding Operations (CAFOs). The measure failed.
- Denver Ordinance 309 was on the ballot in 2024 and sought to ban the city's sole meat processing facility (Superior Farms) and future meat processing facilities. The measure failed.

This trend reflects a deliberate strategy by well-funded interest groups to bypass legislative deliberation and impose ideologically-driven mandates that disregard science, regional diversity, and the practical realities of food production.

Bans Raise Significant Animal Welfare, Human Health, and Farm Sustainability Concerns

Beyond the bypassing of the legislative process, allowing a single state to impose its production preferences on other states raises significant concerns for animal welfare, human health, and farm sustainability.

¹ Proposition 2 applied to California farms. Two years later, the California legislature passed SB 1437, which exported Prop 2 to out-of-state farms.

Animal Welfare

The American Association of Swine Veterinarians (AASV) filed an *amicus curiae* brief in *National Pork Producers Council (NPPC) v. Ross* that delves into the animal welfare concerns of laws like Prop 12.² AASV’s mission, amongst other things, is to “protect and promote the health and well-being of pigs” and to “advocate science-based approaches to veterinary, industry, and public health issues.”³ Accordingly, AASV has “a direct interest in the welfare of pigs and the safety of pork.”⁴

As AASV explained, “There is a strong scientific consensus that, in order to maximize animal welfare, the choice between individual stalls and group pens must be made on a case-by-case basis.”⁵ “By legally barring one option, Proposition 12 is likely to harm animal welfare rather than help it.”⁶ “The best solution for animal welfare is for each team of farmers and veterinarians to have flexibility to determine the housing arrangements that are best for their animals in their circumstances. Because Proposition 12 would take away that flexibility, it places at risk the well-being of many animals.”⁷ AASV notes that Proposition 12 would push sows into a housing system that is associated with over 15% of sows receiving serious wounds.⁸ These conclusions are consistent with farmers’ personal experiences across the United States.

Human Health

The AASV amicus easily discredits any contention that laws like Proposition 12 promote human health. To the contrary, this “contention is not supported by scientific evidence and is not

² Brief of American Association of Swine Veterinarians as *Amicus Curiae* in Support of Petitioners [hereinafter AASV Amicus Brief], *NPPC v. Ross*, 598 U.S. 356 (2023), https://www.supremecourt.gov/DocketPDF/21/21-468/228285/20220617124311471_21-468%20Amicus%20BOM.pdf.

³ American Association of Swine Veterinarians, “AASV Mission,” <https://www.aasv.org/>, last visited July 20, 2025.

⁴ AASV Amicus Brief, *supra* note 2, at 1.

⁵ *Id.* at 3; *see also id.* at 2 (“A well-established body of scientific literature assessing biological metrics of sow welfare individual stalls and group pens shows that both housing methods can be important tools in managing a healthy herd. Categorically banning one of them, as Proposition 12 does, will likely harm rather than improve animal well-being.”).

⁶ *Id.* at 14.

⁷ *Id.* at 22.

⁸ *Id.* at 9-10.

plausible in light of the established practices of pig farms.”⁹ “[T]here is no evidence that the use of individual stalls for sows poses any risk to human health, and there are several objective reasons why it would be unlikely to do so.”¹⁰ Of course, the clear implication of this is also that Prop 12 provides no benefit to human health.

Indeed, “[T]here is a large-scale regime of regulations and inspections in place to deal with that very possibility.”¹¹ For example, the Federal Meat Inspection Act (FMIA) “establishes an elaborate system of inspecting live animals and carcasses in order to prevent the shipment of impure, unwholesome, and unfit meat and meat-food products.” *Nat’l Meat Ass’n v. Harris*, 565 U.S. 452, 455-456 (2012). “FMIA requires all slaughterhouses to comply with the standards for human handling and slaughter of animals set out in the Humane Methods of Slaughter Act of 1958.” *Id.* USDA’s Food Safety and Inspection Service (FSIS) administers “the FMIA to promote its dual goals of safe meat and humane slaughter.” *Id.*

Farm Sustainability Concerns

Allowing one state to dictate livestock housing requirements to the rest of the country jeopardizes the sustainability of thousands of independent family farms. Pig farmers, particularly small and mid-sized farmers, are already under tremendous pressure from inflation, input costs, and labor shortages. Laws like Proposition 12 only intensify these burdens by threatening further consolidation among pig farms, with only the largest farms able to compete.

Retrofitting a sow barn to comply with California’s specific mandates is very difficult (and ultimately may require building a new facility). Building a new barn compliant with Prop 12 can cost upwards of \$3,500 per sow.¹² That’s not just expensive — it’s prohibitive for many

⁹ *Id.* at 2.

¹⁰ *Id.* at 3; *see also id.* at 19 (“[T]here is no scientific evidence to support a claim that requiring group pens for pregnant sows would serve that goal, and there are multiple scientific reasons to doubt such a claim.”).

¹¹ *Id.* at 22.

¹² Pam Lewison, *The impact of California’s Proposition 12 in increasing national production costs and food prices*, Washington Policy Center, at 6 (Nov. 2023), <https://www.washingtonpolicy.org/library/doclib/Lewison-Prop-12.pdf> (“Industry estimates for adding space or retrofitting existing penning throughout the United States suggests the adoption of Proposition 12 regulations will cost approximately \$3,500 per sow.”). *See also* Ben Nuelle, *Pork producers brace for California’s new sow housing rules*, Agri-Pulse (Aug. 11, 2021), <https://www.agri-pulse.com/articles/16277-pork-producers-prepare-for-california-hog-housing-rule-implementation>; Barry K. Goodwin, *California’s Proposition 12 and its Impacts on the Pork Industry*, at 6-7 (May 13, 2021), <https://www.agri-pulse.com/ext/resources/pdfs/Goodwin-and-Prop-12-Final.pdf> (research report furnished to the National Pork

family farms. Meanwhile, the largest farms — especially those already vertically integrated — can adjust more easily, leading to increased concentration and reduced market access for regional or independent producers.

Currently, farmers are at risk of other states enacting conflicting regulations that affect their farms or ratcheting up the requirements after they’ve made expensive changes to animal housing to comply with Prop 12. And farmers are powerless if these requirements are at odds with the advice of their veterinarians or their own experience caring for their animals.

Legal Challenges to State Laws Exporting Production Standards to Other States

The Commerce Clause vests Congress with the power to “regulate Commerce ... and among the several States.” U.S. Const. art. I, § 8, cl. 3. The dormant Commerce Clause is a legal doctrine inferred from the Congress Clause that prohibits states from enacting laws that discriminate against or unduly burden interstate commerce, even in the absence of federal legislation.

The extent to which the dormant Commerce Clause restricts states from burdening interstate commerce is the subject of great debate, especially after *NPPC v. Ross*. Courts have disagreed on how to interpret the ruling¹³ and legal scholars have called the result a “paradox,”¹⁴ and “a mess, but it’s a good deal more troubling than the ordinary mess.”¹⁵ The one point of agreement is that there is no agreement on how courts should handle the issue of states exporting animal farming regulations into other states.¹⁶

Below is a summary of the dormant Commerce Clause challenges to California Prop 2/AB 1437, Prop 12, and Massachusetts Question 3.

- *Missouri v. Harris*, 847 F.3d 646 (9th Cir. 2017), *cert. denied*, 137 S. Ct. 2188
 - Six states challenged AB 1437. The Ninth Circuit found that the states lacked

Producers Council that provides a per sow estimate for compliance that costs “considerably more per animal” for smaller operations).

¹³ See, e.g., *Iowa Pork Producers Ass’n v. Bonta*, No. 22-55336, 2024 WL 3158532 (9th Cir. June 25, 2024) (Ninth Circuit judges disagreeing about the impact and meaning of *NPPC v. Ross*).

¹⁴ See Bradley Joondeph, The ‘Horizontal Separation of Powers’ After *National Pork Producers Council v. Ross*, 61 San Diego L. Rev. 45, 73 (2024), available at <https://digital.sandiego.edu/sdlr/vol61/iss1/3/> (“[T]he Court’s judgment in *NPPC* regarding the producers’ undue-burden claim represents a bit of a paradox... And the oddity of this result indicates that this portion of this result indicates that this portion of the NPPC’s judgment may mean *nothing* going forward—other than that California is entitled to enforce Proposition 12.”).

¹⁵ See David Post, *Another Voting Paradox Case (Pork Division)*, The Volokh Conspiracy (May 16, 2023), <https://reason.com/volokh/2023/05/16/another-voting-paradox-case-pork-division/>.

¹⁶ See Will Baude & Daniel Epps, *Break the Fourth Wall*, Divided Argument (May 18, 2023) (noting that it is unclear how courts should interpret the case).

standing to bring the claim.

- *Missouri v. California*, No. 220148, 586 U.S. 1065 (2019) (motion for leave to file bill of complaint denied).
 - Thirteen states filed an original jurisdiction claim to the Supreme Court challenging SB 1437. The Supreme Court denied the states leave to file a complaint.
- *North American Meat Institute v. Becerra*, 825 Fed. Appx. 518 (9th Cir. 2020), *cert. denied* 141 S. Ct. 2854 (2021)
 - The North American Meat Association (NAMI) challenged Prop 12. The Ninth Circuit held that Prop 12 does not violate the dormant Commerce Clause because it “does not impact an industry that is inherently national or requires a uniform system of regulation” and “precludes sales of meat products produced by a specified method, rather than imposing a burden on producers based on their geographical origin.” *Id.* at 520.
- *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023)
 - AFBF and NPPC challenged Prop 12. In a fractured decision, the Supreme Court found that Prop 12 does not violate the dormant Commerce Clause.
 - The decision lacks a controlling rationale, leading to confusion by courts and scholars. *See, e.g., Iowa Pork Producers Ass’n v. Bonta*, No. 22-55336, 2024 WL 3158532, at *2-3 (9th Cir. June 25, 2024) (the majority “did not agree upon a ‘single rationale’ and there is no opinion in that case that ‘can be reasonably be described as a logical subset of the other.’” “Because the Court did not agree upon a single rationale for affirming, and neither of the two rationales is a ‘logical subset’ of the other, only the specific result in *NPPC* is binding on lower federal courts.” (Citations omitted)).
 - Justices Thomas, Gorsuch, and Barrett would functionally limit the dormant Commerce Clause to prohibit states discriminating against commerce from other states and jettison the prohibition on states unduly burdening interstate commerce.
 - Justices Sotomayor and Kagan would keep the dormant Commerce Clause prohibition on unduly burdening interstate commerce, but held the petitioners failed to plead sufficient facts.
 - Justice Barrett wrote separately to rebut Justices Sotomayor and Kagan, holding that the petitioners easily pled a substantial burden on interstate commerce. However, she did not think the dormant Commerce Clause provided relief.
 - Chief Justice Roberts and Justices Alito, Kavanaugh, and Jackson dissented, holding that the dormant Commerce Clause does prohibit states unduly burdening interstate Commerce and that the petitioners easily pled facts establishing a claim.
 - The justices held that courts should “consider whether, by effectively requiring compliance by farmers who do not even wish to ship their product into California, Proposition 12 has a nationwide reach.” 598 U.S. at 400.

- In addition, petitioners allege that Prop 12 will produce “worse health outcomes” and “spread pathogens and disease.” *Id.* at 400. “These consequential threats to animal welfare and industry practice are difficult to quantify and are not susceptible to categorization as mere costs of compliance.” *Id.* at 401.
 - “[P]etitioners here allege that Proposition 12 will force compliance on farmers who do not wish to sell into the California market, exacerbate health issues in the national pig population, and undercut established operational practices.” *Id.* at 401.
 - Justice Kavanaugh wrote a separate dissent, holding that “California’s novel and far-reaching regulation could provide a blueprint for other States. California’s law thus may foreshadow a new era where States shutter their markets to goods produced in a way that offends their moral or policy preferences—and in doing so, effectively force other States to regulate in accordance with those idiosyncratic state demands. That is not the Constitution the Framers adopted in Philadelphia in 1787.” *Id.* at 407.
- *Iowa Pork Producers Ass. v. Bonta*, No. 22-55336, 2024 WL 3158532 (9th Cir. June 25, 2024), cert. denied No. 24-728, 2025 WL 1787818 (U.S. June 30, 2025)
 - Iowa Pork Producers Association challenged Prop 12. The Ninth Circuit, interpreting *NPPC v. Ross*, held that, due to the fractured rationale, the Supreme Court decision only controls its specific result.
 - However, the judges disagreed about the impact and meaning of *NPPC v. Ross*.
- *Massachusetts Restaurant Association v. Healey*, 4:22-cv-11245 (D. Mass)
 - Several trade associations challenged Massachusetts Question 3.
 - Under the regulations implementing Question 3, Massachusetts prohibited the transshipment of pork through the state into other states. This would have prevented the movement of pork into Maine or New Hampshire while also threatening to cut off supplies to restaurants and grocers in parts of Connecticut, New York, Rhode Island and Vermont who relied on distribution chains that ran through Massachusetts. Massachusetts entered into a consent agreement with the plaintiffs agreeing not to enforce the transshipment prohibition.
- *Indiana v. Massachusetts*, 586 U.S. 1065 (2019)
 - Thirteen states filed an original jurisdiction claim to the Supreme Court challenging Massachusetts Question 3. The Supreme Court denied the states leave to file a complaint.
- *Triumph Foods v. Campbell*, 1:23-cv-11671 (D. Mass)
 - Several farm groups challenged Massachusetts Question 3. The district court rejected the dormant commerce clause claim under *NPPC v. Ross*. 715 F.Supp.3d 143 (D. Mass. 2024). The court also rejected the federal preemption claim. 742 F.Supp.3d 63 (D. Mass. 2024).
 - The case is currently on appeal to the First Circuit. Amongst other things, the petitioners argue that the district court failed to address several constitutional

issues, including their claims under the Privileges and Immunities Clause, Full Faith and Credit Clause, Due Process Clause, and Import-Export Clause.

- *United States v. California*, No. 2:25-cv-6230 (C.D. Cal.)
 - The United States challenged California Prop 2 and Prop 12 as to their application to egg-laying hens. The United States claims that the Egg Products Inspection Act (EPIA) preempts prop 2 and Prop 12's regulations on the quality and condition of eggs and the labelling of eggs. *See* 21 U.S.C. §1052(b) ("For eggs which have moved or are moving in interstate or foreign commerce, . . . no State or local jurisdiction may require the use of standards of quality, condition, weight, quantity, or grade which are in addition to or different from the official Federal standards... Labeling, packaging, or ingredient requirements, in addition to or different than those made under [EPIA], the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, may not be imposed by any State or local jurisdiction.").

As the record of litigation makes clear, the judiciary has reached an impasse. It is now incumbent upon Congress to provide clarity.

Congress Should Fix the Problem and Has the Authority to Do So

Given the difficulty the courts have had resolving states imposing their preferred farming practices onto other states, Congress should address the problem. And Congress clearly has the authority to do so. Indeed, Justices Gorsuch, Thomas, and Barrett's chief concern in *NPPC v. Ross* was that the judiciary should not overstep and abrogate Congress's delegated authority. "Everyone agrees that Congress may seek to exercise this power to regulate the interstate trade of pork, much as it has done with various other products. Everyone agrees, too, that congressional enactments may preempt conflicting state laws." *NPPC v. Ross*, 598 U.S. 356, 368 (2023). Congress "is better equipped than this Court to identify and assess all the pertinent economic and political interests at play across the country." *Id.* at 383.

Farmers today face a growing risk of being subject to overlapping or conflicting mandates from multiple states. While Prop 12 requires 24 square feet of space per sow another state could shift the requirement – after investments have been made – to 25 square feet. Or states may enact conflicting standards. This forces farmers into a Hobson's choice of retrofitting their barns (which they may not be able to afford) or going against their own animal husbandry experience and the advice of veterinarians. Only Congress can fix this problem.

Section 12007 Narrowly Fixes the Problem

Proposed Section 12007 narrowly fixes the problem of states imposing their preferred farming practices onto other states, such that no single state can dictate to producers in other states how to raise their animals. Importantly, it does not prohibit states from continuing to regulate farms within their borders or prohibit farmers from adopting the standards set by Prop 2, Prop 12, or Question 3. It similarly does not upset existing federal regulations of farms and food production across the country. *See, e.g.*, the Animal Health Protection Act, Swine Health Protection Act, Federal Meat Inspection Act, Clean Water Act, Clean Air Act, Humane Methods of Slaughter Act, and Occupational Safety & Health Act.

Proposed Section 12007 is significantly narrower in scope than previous legislation, such as the Ending Agricultural Trade Suppression (EATS) Act or the Protect Interstate Commerce Act (PICA). Those earlier bills would have preempted regulation of the production and manufacturing practices for all agricultural products outside of the regulating state.

In contrast, Section 12007 only preempts states regulating the production (raising) practices of livestock on out-of-state farms. This is much more specifically targeted to the issues currently facing small and medium sized family farms across the country.

To reiterate, the proposal does not make it illegal to farm in conformance with Proposition 12. It simply ensures that farmers in Pennsylvania, Minnesota, North Carolina, Illinois, or Iowa aren't forced to farm by the law of a state they do not live or vote in. That is the correct balance between state and federal authority — and the only way to preserve a functioning interstate agricultural economy.

Conclusion

Mr. Chairman, members of the Committee, the American Farm Bureau Federation appreciates your leadership in addressing the chaos created by Proposition 12. When a single state can condition access to its market on compliance with production mandates that override the judgments of veterinarians, farmers, and USDA experts nationwide, Congress must act.

This is not a theoretical concern — it is already harming farmers, confusing the courts, and threatening the viability of a national food system. This proposed legislation restores clarity,

reasserts Congressional authority over interstate commerce, and protects both farmers and consumers from a patchwork of conflicting mandates.

Thank you for the opportunity to testify today. I look forward to answering your questions.