

No. 24-728

IN THE
Supreme Court of the United States

IOWA PORK PRODUCERS ASSOCIATION,
Petitioner,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS ATTORNEY
GENERAL OF CALIFORNIA, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF IOWA AND 22 OTHER STATES
AS AMICI CURIAE IN SUPPORT OF
GRANTING THE PETITION**

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QUESTIONS PRESENTED

1. Whether a party alleging that Proposition 12 discriminates against interstate commerce, both directly and under *Pike v. Bruce Church* (among many other viable counts), states a claim, as most Justices concluded in *Ross*?
2. Whether federal courts evaluating fractured opinions from this Court consider all Justices' opinions to determine the majority position on a legal issue as the First, Third, Fourth, and Eighth Circuits hold, or whether lower courts are limited to consider only opinions concurring in the result as the District of Columbia, Second, Fifth, Sixth, Ninth, Tenth, and Eleventh Circuits hold.

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INTEREST OF AMICUS CURIAE¹

Amici curiae States of Iowa, Alabama, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, West Virginia, and Wyoming (“amici States”) submit this brief in support of Petitioner, Iowa Pork Producers, urging this Court to reverse the Ninth Circuit’s decision. That decision declined to answer a question with vital implications for State sovereign interests: whether one State may discriminate against commerce in other States with the fig leaf of neutral domestic application. *See* App. 1a-15a. Purportedly relying on this Court’s decision in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023) and its own circuit precedent, the Ninth Circuit declined to follow this Court’s decision in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). This Court should remedy what has become a muddy jurisprudential sty.

Amici States have few interests as vital as the authority to regulate health and safety—and agriculture—within their own boundaries. Now, that fundamental aspect of our constitutional order is being challenged. Iowa is the number one pork-producing state in the United States and the top state for pork exports. In Iowa, the pork industry employs more than 147,000 Iowans and contributes billions of dollars annually to the economy. Beyond Iowa, the pork industry is a major economic driver in many States. Proposition 12 has already disrupted the

¹ Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

industry by imposing stringent requirements inconsistent with industry practices on pig farmers and pork processors in Iowa and other pork-producing states. Mandating luxury accommodations for pigs may sound nice in California but it has real costs across the country. This costly mandate has already snarled supply chains and imposed substantial burdens on the national pork market, increasing the price of pork for all Americans. This mandate also undermines Iowa regulators' expertise in establishing safe and humane standards for raising healthy, affordable, and delicious pork. For these reasons, the States have a critical interest in the outcome of this litigation.

The Ninth Circuit's approach declines to address the arrogation of authority and abrogation of other States' sovereign authority imposed by Proposition 12. This Court should grant certiorari and allow the Petitioners' case to proceed.

SUMMARY OF ARGUMENT

California has fired the first shots in what could be an interstate trade war. Rather than respect her sister States' regulatory approach to raising pork in their own States, California seeks to substitute its own inexpert judgment for what regulations are best. California does not produce meaningful amounts of commercial pork—but it is the nation's top consumer. Proposition 12 requires pork producing States to oversee massive disruption in vital businesses to establish two supply chains: one to sell pork in California and one to sell everywhere else.

Even if California's trade war on best practices was limited only to California it would be a major

problem. Prices in California have spiked over the past two years, making feeding California's nutritious and healthy pork even more expensive. But other States are imposing their own nationwide regulations that pork produced outside of their States must follow or risk being prohibited from sale. Not yet are there conflicting regulations between those States, but a establishing a patchwork of mandatory regulations across the fifty States risks undermining one of the core pieces of our federalist system. Mutual respect rather than imperious regulation should be the norm. And unlike this Court's earlier case in *National Pork Producers v. Ross*, Petitioners here have raised and preserved the discrimination and interest-balancing claims at issue. This Court should find that the balances weigh against allowing Californians to tell States across the country how to raise hogs.

Beyond those precedents, there are many potential constitutional infirmities with Proposition 12. On remand, with this Court's instruction, the district court can fully address those constitutional issues in the first instance. To reach some of those issues, this Court need address precedents that violate the original understanding of the clauses that they interpret.

The amici States respectfully request that the Court reverse the Ninth Circuit to enjoin enforcement of Proposition 12.

ARGUMENT

I. PROPOSITION 12 HARMS AGRICULTURAL STATES AND CONSUMERS

Proposition 12 has already forced out-of-state farmers to endure enormous compliance costs. Economic studies estimate that compliance will cost hog producers in the United States between \$294 million and \$348 million. Brief of Iowa Pork Producers Ass’n, *et al.* as *Amici Curiae*, p. 17, *Nat’l Pork Producers Council*, 598 U.S. 356.

To contextualize those numbers, an “average barn might cost \$1,600 to USD 2,500 per sow, or \$3 million to \$4.5m million in total.” Erica Shaffer, *Rabobank: California’s Prop 12 a Call to Lead on Animal Welfare*, MEAT+POULTRY (2021), <https://perma.cc/TUZ5-SX5V>. But Proposition 12 will raise those costs to “averag[e] as much as \$3,400 per sow.” *Id.* Farmers’ costs will double—causing some farmers to go out of business and dramatically raising consumer costs. That stems from legal changes like elevated building costs of these luxury accommodations. *See id.*

Small, independent hog farmers will be devastated. Most pig farmers continue to operate independent farms, with 52,984 independent pig farms holding 25.6 million pigs in inventory, according to the 2022 Agricultural Census. Nat’l Agric. Stat. Serv., 2022 Census of Agriculture: U.S. Nat’l Level Data, Table 23, <https://perma.cc/M3FE-KJA9>. Of those farms, about 90 percent had fewer than 100 pigs in inventory. *Id.*

Proposition 12 will disproportionately affect those farms because small farmers generally have “a lower return to investments and therefore will likely realize less favorable terms of credit.” Barry K. Goodwin, *California’s Proposition 12 and its Impacts on the Pork Industry* (May 13, 2021), at 8–9. Thus, they “will be the least able to undertake the changes that would make facilities comfortable.” *Id.* Proposition 12 thus places an added burden on a substantial and already contracting segment of the industry. From 2017 to 2022, the number of independent farms with herds of fewer than 100 pigs dropped by about 9 percent. *Compare* Nat’l Agric. Stat. Serv., 2022 Census of Agriculture: U.S. Nat’l Level Data, Table 23 *with* Nat’l Agric. Stat. Serv., 2017 Census of Agriculture: U.S. Nat’l Level Data, Table 23, <https://perma.cc/D3TY-62EJ>.

Expensive regulations will “hasten the concentration of the hog Industry, with smaller farmers exiting the sector, leaving a US hog industry that has fewer but larger farms.” Goodwin, *supra*, at 10.

Indeed, the problem is not isolated to California. In the wake of *National Pork Producers*, other States have imposed their own, different, pork-related mandates. The potential financial effect on farmers will continue to increase if other States impose similar unworkable regulations with their own idiosyncrasies inconsistent with those in California. For example, farmers in Iowa could invest millions of dollars to remodel their hog farms to comply with California’s requirements only to find Massachusetts enacting a law imposing larger housing requirements

per pig. See Brief of Iowa Pork Producers Ass'n, *et al.* as *Amici Curiae*, p. 17.

How many States with different and perhaps conflicting regulations must hog farmers comply with? There is a real risk of forcing those farmers to continuously “invest millions of dollars in capital expenditures” to “comply with everchanging standards that other states choose.” *Id.* at 18.

While Proposition 12 is expensive, non-compliance may cost pork producers even more. If farmers and pork processors do not adjust to the new rules, they may be shut out of California entirely. And similar regulations threaten shutting farmers out of entire regions. For example, Massachusetts wants to impose its new requirements on any pork transiting through the State. Because Massachusetts “is [the] distribution hub for Vermont, New Hampshire, Rhode Island and Maine,” Proposition 12 “could affect the production and sale of pork across a broad swath of the country.” The Editorial Board, *Massachusetts Wants Your Bacon*, WALL STREET JOURNAL, (Aug. 10, 2022), <https://perma.cc/9HR8-9KDQ>.

And hog farmers probably will not be the hardest hit. The increased costs on raising and processing pork will make American consumers squeal. Pork prices are already high enough. In 2021, pork prices rose 12.1 percent from the previous year. Brian Deese, *et al.*, *Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families*, THE WHITE HOUSE (Sept. 8, 2021), <https://perma.cc/AJ7F-XFAA>. And in October 2022, pork prices hit a record level of \$5.05 per pound. Jennifer Shike, *Here's a Look at Pork Price Spreads*,

PORK BUSINESS (May 15, 2023), <https://perma.cc/N23H-CA5H>.

Costly regulations mean expensive pork. Indeed, early data on California’s Proposition 12 already shows that consumers are seeing higher pork prices at the grocery store. Three USDA economists analyzed preliminary retail scanner data and found that pork prices in California rose 20 percent on average since July 1, 2023, when the State began implementing the new regulations. *See* Hannah Hawkins, Shawn Arita, & Seth Meyer, *Proposition 12 Pork Retail Price Impacts on California Consumers*, U.C. Giannini Found. of Agric. Econ., ARE Update 27(3), 5–8 (2024), available at <https://perma.cc/Z8ET-D4Q4>.

The price of some pork products increased even more. For example, after Proposition 12 went into effect, the price of pork loins rose by more than 40 percent. *Id.* at 5. That means California consumers are paying an extra \$1.04 per pound for bacon, \$0.54 per pound more for ribs, and an additional \$1.42 per pound for pork loin—the three most-purchased pork products by California consumers. *Id.* at 7. Those price increases continued after the regulations were fully implemented on January 1, 2024. More regulations will continue to inflate prices.

High pork prices disproportionately affect lower-income households. Laws like Proposition 12 may “lead to a decline in the number of options” and “make certain pork products too expensive for lower-income people.” Alicia Wallace, *Pork Is Already Super Expensive. This New Animal-Welfare Law Could Push Prices Higher*, CNN BUSINESS (Oct. 17, 2021), <https://perma.cc/42YJ-CF7J>. That shift will hurt the

pocketbooks of folks who have long relied on pork as a low-cost, high protein option for feeding their families.

Proposition 12 also jeopardizes Americans' health and safety. Scientific literature suggests that animal-confinement regulations, like those Proposition 12 mandates, could worsen animal health and welfare and introduce extra risk to standardized sanitary practices. Counter-intuitively for nonfarmers, sometimes larger pens increases the risk of injury and illness for hogs. For example, housing hogs in larger individual stalls increases the risk of disease transmission. Those spaces mean that pigs are more likely to come into nose-to-nose contact and share water and feeding systems. *See* Brief for American Association of Swine Veterinarians as Amicus Curiae, p. 4–19, *Nat'l Pork Producers Council*, 598 U.S. 356. Therefore, Proposition 12 has real risks for human health.

II. PROPOSITION 12 HAS STARTED AN INTERSTATE RACE-TO-THE-BOTTOM.

The Framers' "central concern . . . for calling the Constitutional Convention" was "the conviction that, in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the colonies and later among the States under the Articles of Confederation." *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979). "One of the major defects of the Articles of Confederation . . . was the fact that the Articles essentially left the individual States free to burden commerce both among themselves and with foreign countries very much as they pleased." *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 283 (1976). Yet,

Proposition 12—and ballot initiatives like it—reinvigorate those isolationist tendencies and undermine the economic union the Framers created. “The entire Constitution was ‘framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division.’” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 n.12 (1989) (quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935)). Proposition 12 sows this division in multiple ways:

First, Proposition 12, creates a “risk of inconsistent regulation by different States.” *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). Here, California requirements for pig farms and pork processors deviate from lawful industry practices across the country. California itself has few hog farmers or pork producers—most live elsewhere. That means, in effect, that the State is trying to regulate a market in which it lacks expertise and economic stake.

Iowa, for example, produces a lot of pork. In 2020, the pork industry contributed \$40.8 billion in output, and more than 147,000 jobs to Iowa’s economy. 2020 Iowa Pork Industry Report, at 7 (May 2020), *available at* <https://perma.cc/8PB8-QYLY>. Hogs generated \$893 million in state and local taxes and \$1.3 billion in federal taxes. *Id.* That same year, Iowa had more than 5,400 pig farms and housed nearly one third (almost 25 million) of the nation’s hogs. *Id.* at 6.

Contrast Iowa with California, which produces very few of its own pigs. “Although California makes up less than one percent of the total U.S. pork production, it accounts for 13% of the national pork consumption.” California Pork Producers Association,

Commodity Fact Sheet Pork (April 2020), available at <https://perma.cc/5U2G-BKT4>. California is the nation's largest consumer of pork. John McCracken & Ben Felder, *With California's Prop 12 Now Law, Pork Producers Adapt While Lobbying Groups Continue to Fight*, INVESTIGATE MIDWEST (March 6, 2024), available at <https://perma.cc/5MYU-TEX8>.

California's imposition comes at a cost and affects every link on the supply chain. The market segmentation that Proposition 12 causes directly undermines the "maintenance of a national economic union unfettered by state-imposed limitations on interstate commerce" that the Framers sought to establish. *See Healy*, 491 U.S. at 335–36.

Second, upholding Proposition 12 could drag other States into a regulatory "race to the bottom" that extends beyond just pork. As Justice Cardozo once warned, allowing one State to project its regulation into another would mean "the door has been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation." *Baldwin*, 294 U.S. at 522. For example, imagine Washington—the State with the highest minimum wage—refusing to allow sale of products from States with a lower minimum wage. Or imagine a State prohibiting "the retail sale of goods from producers that do not pay for employees' birth control or abortions." Brief of Indiana and 25 Other States as Amici Curiae, p. 33, *Nat'l Pork Producers Council*, 598 U.S. 356.

Upholding Proposition 12 invites States to upend national markets based on "flavor of the day" policy preferences and so "effectively force other States to regulate in accordance with those

idiosyncratic state demands.” *Nat’l Pork Producers Council*, 598 U.S. at 407 (Kavanaugh, J., concurring in part and dissenting in part). Vague State appeals to health and economic welfare should not suffice. “To give entrance to that excuse would be to invite a speedy end of our national solidarity.” *Baldwin*, 294 U.S. at 523.

Indeed, State efforts to exert unilateral control over large sectors of the national economy already are increasingly common. For example, in the field of energy regulation, Oregon and California regulate greenhouse gas emissions along the electricity supply chain leading to those states. Cal. Code. Regs. Tit. 17, § 95481; Or. Admin. R. 340-253-0040; *see also* James W. Coleman, *Importing Energy, Exporting Regulation*, 83 *Fordham L. Rev.* 1357 (2014). Meanwhile, Colorado regulates the renewable energy portfolios of power companies selling electricity for the State’s use. Colo. Rev. Stat. § 40-2-124. Laws and ballot initiatives like Proposition 12 thus invite States to revert to a time when “each state would legislate according to its estimate of its own interests, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view.” *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 533 (1949) (internal quotation omitted).

Third, California’s energy efficiency efforts show “how even well-intentioned regulation presents a temptation toward protectionism.” Coleman, *supra* at 1386. During its implementation, California altered the standard to break ethanol into two geographic categories, “California” and “Midwest,” assigning a higher carbon intensity score to Midwest ethanol compared to ethanol produced the same way in

California. *Id.* at 1386–87. California’s desire to be the nation’s regulator cannot be what the compact between the States intended when they joined the Constitution. Even then, because California could not stomach such strict regulations on an industry present in the state “so it exempted unconventional oil despite its similar emissions profile.” *Id.* at 1387. The pork producers are not so lucky.

State policy “experiments” like Proposition 12 are “fertile ground for protectionist measures that would at best forfeit the efficiency and reliability benefits of integrated . . . markets, and at worst, could ignite state-to-state and even international trade wars.” *Id.* at 1399.

III. PROPOSITION 12 VIOLATES THE CONSTITUTION.

Beyond the Commerce Clause, Proposition 12, and other laws like it, may also implicate other constitutional provisions such as the Import-Export Clause and the Full Faith and Credit Clause. *See Nat’l Pork Producers Council*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part).

Under the Import-Export Clause, “No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it’s inspection laws.” U.S. Const. art. I, § 10, cl. 2. “The Import-Export Clause was the principal remedy proposed by the Philadelphia Convention to remedy the commercial strife that characterized the relations among the states under the Articles of Confederation.” Boris I. Bittker & Brannon P. Denning, *The Import-Export Clause*, 68 Miss. L.J. 521, 521 (1998). In

particular, the Clause was designed to stop the “exploitation of the inland states by the seaboard states,” which were imposing taxes on arriving goods destined for other states. *Id.* at 522.

This Court should return to the Clause’s original meaning. See *Nat’l Pork Producers Council*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part); *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 573 (2015) (Scalia, J., dissenting); *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 621–637 (1997) (Thomas, J., dissenting); *Brown v. Maryland*, 25 U.S. 419, 438–439, 449 (1827); but see *Woodruff v. Parham*, 75 U.S. 123 (1869) (limiting the Import-Export Clause to foreign trade). That type of return means that discriminatory actions taken by one State to require regulations in another State could require clearing a higher hurdle. Indeed, “not all duties were taxes: Some were imposed not for revenue but merely to regulate (or effectively prohibit) trade in particular articles.” Robert G. Natelson, *What the Constitution Means by “Duties, Imposts, and Excises”—and “Taxes” (Direct or Otherwise)*, 66 Case W. Rev. 297, 320 (2015).

Justices Scalia and Thomas have explained that the Import-Export Clause prevents States “from imposing certain especially burdensome taxes” and duties on imports from other States and not just from foreign countries. *Wynne*, 575 U.S. at 573.

Here, Proposition 12 conditions the sale of pork on “the use of preferred farming, manufacturing, or production practices in another State” where the pork originated. *Nat’l Pork Producers Council*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part). That could be construed as a tax or duty

under the original understanding of the Import-Export Clause. Because that may conflict with the Import-Export Clause's original meaning, the issue warrants reconsideration. *See id.*

Proposition 12 may also violate the Full Faith and Credit Clause, which requires each State to afford "Full Faith and Credit" to the "public Acts" of "every other State." U.S. Const. art. IV, § 1. It prevents States from "adopting any policy of hostility to the public Acts" of another State. *Carroll v. Lanza*, 349 U.S. 408, 413 (1955). According to Justice Kavanaugh, "[a] State's effort to regulate farming, manufacturing, and production practices in another State (in a manner different from how that other State's laws regulate those practices) could in some circumstances raise questions under that Clause." *Nat'l Pork Producers Council*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part); *see also* Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 Notre Dame L. Rev. 1133, 1151-53 (2010); Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249, 290, 296-301 (1992).

While the Full Faith and Credit Clause does not have so broad a scope as to encompass any law that has extraterritorial effect, the lower courts can assess whether the Full Faith and Credit Clause is implicated when an agricultural regulation conflicts with another State's laws about how pork may be produced in that State in the first instance.

California created the precise scenario about which Justice Kavanaugh warns. Proposition 12 regulates pork production in States, like Iowa, in a manner different from how those States regulate pork

production. See Elizabeth R. Rumley, *States' Farm Animal Confinement Statutes*, Nat'l Agric. Law Ctr., <https://perma.cc/C9GZ-PZ3U>. Indeed, Proposition 12 explicitly prohibits certain States from engaging in otherwise legal practices encouraged by those States' laws if they want to sell pork in California. Thus, the Full Faith and Credit Clause should preclude California from enacting its agricultural regulations that conflict with Iowa's laws and that of other top pork-producing states.

CONCLUSION

This Court should grant *certiorari* to reverse the Ninth Circuit Court's judgment.

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January 29, 2025

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APPENDIX

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