



SCOTUS Could (and Should) Strike Down California's Animal-Rights Law

Proposition 12 threatens the national food economy.

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The U.S. Supreme Court has agreed to hear an important challenge to a terrible, regressive California animal-rights law that violates the U.S. Constitution, fairness, and common sense. The challenge was filed by the nation's largest pork producers, most of whom may no longer be able to supply pork to the California market due to Proposition 12, an animal-rights law adopted by California voters in 2018.

At its most basic level, this case concerns Prop. 12's targets: farmers raising livestock outside California for consumers in California. But, as I've detailed, given California's gigantic population and the impact the state's food economy and regulations have on the rest of the nation, this case is also as much about farmers, retailers, restaurateurs, and consumers in Iowa, South Dakota, or North Carolina as it is about those in California.

As I explained earlier this year, Proposition 12 was a California ballot measure that was adopted in 2018 by nearly two-thirds of state voters. The initiative, supported by many of the nation's largest animal-rights groups, requires that confinement spaces for covered livestock whose meat or eggs will be sold in California must be large enough that the animals have enough room to lie down, turn around, and spread their wings. The law includes fines and possible jail time for violators.

Prop. 12's definition of "confined in a cruel manner" includes confining a veal calf in a space that's less than 43 square feet; a breeding pig in a space less than 24 square feet, or an egg-laying hen in a space that's less than 144 square inches. Sellers of meat and other products made from these animals may be held liable in California under the law if they knowingly sell products—a pork chop, say—that don't comply with the law.

While Prop. 12 will raise prices that California consumers pay for many animal products, its real impact is—as intended—being felt outside the state.

"The requirements of Proposition 12 apply to covered products sold in the state, irrespective of whether the products originate from covered *animals raised on farms* within or *outside of California*," a state Prop 12 explainer details (emphasis mine). "For example, a breeding pig confined in another state must be housed in compliance with Proposition 12 if her offspring will be used for purposes of covered pork products sold in California for human consumption."

That's outrageous. It's even more outrageous when you consider that California imports nearly all (99.87 percent) of its pork. And though Californians consume around 15 percent of the nation's pork, only around 4 percent of pork producers nationwide currently meet California standards.

It's almost as if Prop. 12 was adopted to crush the national market for pork. Thankfully, the U.S. Constitution prohibits such laws.

In their suit, the pork producers rightly argue that Prop. 12 is unconstitutional because it created "dramatic economic effects outside of the state and require[s] changes to the nationwide farm industry [that] violate the dormant Commerce Clause." (The dormant Commerce Clause, I've explained, prohibits states from adopting laws and regulations, like Prop. 12, that impose unfair burdens on interstate commerce.)

A ruling in the case could have a dramatic impact on other laws around the country—including California's equally unconstitutional foie gras ban and a Massachusetts law that's similar to Prop. 12. Indeed, the first case listed in the pork producers' Supreme Court petition is a suit challenging California's foie gras ban. I've written at least as much as anyone about that case, including many columns and a Supreme Court amicus brief in support of foie gras producers (which I submitted, as counsel of record, on behalf of the Reason Foundation, which published this website, and the Cato Institute).

"California's foie gras ban is a primary example of a food or agricultural law that erects unconstitutional obstacles and barriers to the national food economy. But the law does not stand alone. Other recent California laws evidence both a comparable intent and impact. Worse still, other states have begun to follow California's lead, passing laws that pose similar challenges to the existence of the national food economy," I explained in the amicus brief. "If this Court allows states to prohibit interstate commerce in poultry products and other animal products that are inspected and deemed wholesome, unadulterated, and properly branded under federal law, then laws like these from California, Massachusetts, and other states could ultimately destroy our national market in food."

I am a big fan of all types of food economies—local, state, regional, national, and international—and I think each plays a key role in making America's food supply abundant, resilient, and responsive to consumer demands. If we are to continue to have a robust national food economy, the Supreme Court must strike down Proposition 12.