

The Supreme Court has taken up California’s attempt to regulate the treatment of pigs on the farms of other states, as well.

By Jessa Martin

March 30, 2022

Is it possible for the state of California to dictate how pigs are raised in other states? Today, the Supreme Court announced that it intends to take a position on the issue.

Prop 12 was enacted by California voters in 2018, and it prohibits the sale of pork and chicken reared in confinement enclosures that aren’t large enough for the animals to freely walk around in.

Californians eat a lot of pork (around 13% of national consumption), yet the state generates only about.3% of the country’s pork supply as a whole. As a result, Proposition 12 had the effect of imposing major expenses and regulations on farms outside of the state of California.

According to the National Pork Producers Council (NPPC), California’s Proposition 12 violated the dormant commerce clause, a constitutional tenet that prohibits states from enacting laws that restrict cross-border trade.

Pike v. Bruce Church Inc., decided by the Supreme Court in 1970, found that excessive regulations governing the conditions under which food producers can ship goods to other states could be in violation of the commerce clause if they impose significant costs on those producers with little actual benefit. To argue that Prop. 12 is unconstitutional, the NPPC is relying on that case and others.

There are numerous prominent pork producers who say they will be able to supply Californians with pork despite the proposition, including Hormel and Tyson, the state’s attorney general, Rob Bonta, and Humane Society of the United States, all of which are supporting the measure.

The petitioners have not claimed that compliance with this restriction has caused “massive and costly alteration[s]” or “disrupt[ed] supply and demand throughout the country,” according to Bonta’s assertions.

However, customers' pork prices have risen dramatically across the country, and this isn't solely because of the recent spike in inflation. According to the Bureau of Labor Statistics, consumer prices in 2021 rose by around 7% over 2020.

Retail bacon prices rose by 23.7% at the same time. Bacon costs significantly different in California than in Florida. Oscar Mayer bacon costs \$11.49 at grocery stores in Los Angeles, according to Instacart's data for the city. It costs \$6.98 to buy the exact identical slab of Oscar Mayer cheese at a Wal-Mart in Orlando, Florida.

Californians were warned about the potential impact of Proposition 12 on pork prices, yet they voted for it nevertheless, according to Bonta. True, that's what I was getting at. Consumers in California had a say, but those outside the state did not.

While the libertarian Cato Institute has filed an amicus curiae brief in support of the pork industry and the state's new regulations, the state has not given any evidence that larger cages will truly improve animal welfare or lessen the risk of foodborne illness.

A few words:

Pork farming in-state might be labeled as humane by the state of California, allowing residents to choose between humanely raised in-state pork and pork imported from other states. Regulating intrastate pork production in this way would meet California's regulatory goals while minimizing the burden on interstate commerce.

California may not, however, assume that it has the right to dictate agricultural practices to the rest of the country. This authority belongs to Congress, not the people of California, according to the U.S. Constitution.

Cato estimates that "7.5 million California voters have effectively projected their moral standards onto the entire American population" if the Supreme Court upholds Proposition 12. Many of these voters would probably have liked to have done precisely that, but the Constitution forbids it.