



## The Supreme Court's Decision To Duck a Foie Gras Case Is Bad News for Food Freedom

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The U.S. Supreme Court announced Monday it would not (yet) hear an appeal in a case challenging California's unconstitutional and much-reviled foie gras ban. The case will now head back to U.S. District Court.

The Supreme Court's decision is a temporary setback for foie gras producers, chefs, and others fighting the law. They've vowed to continue their efforts. Michael Tenenbaum, who represents the plaintiffs in the case, told me this week that he and his clients look forward to proceeding with the case and that they're confident they will prevail. I am, too.

Meanwhile, though, restaurants and others in California that serve foie gras could face finest of \$1,000 for any violation of the law.

Animal rights groups applauded this week's Supreme Court decision. PETA called the denial of cert. a "victory for animals [that] follows tireless efforts from animal rights activists to oppose the archaic foie gras industry."

The Animal Legal Defense Fund hailed the decision as "a landmark moment for ducks," incorrectly labeling the Supreme Court's actions a "death knell" and "the foie gras industry's last appeal."

But supporters of foie gras, the Constitution, and food freedom were disheartened by the Court's action.

Culinary leaders—from California chefs to French foie gras producers—are aghast. I am, too. Earlier this year, I wrote and submitted an amicus brief in support of the petitioners in this case—foie gras producers and sellers—on behalf of both the Reason Foundation (the nonprofit that publishes *Reason*) and the Cato Institute, in which I urged the Supreme Court to take up the foie gras case.

(I won't rehash the legal arguments here. Those interested in learning more may do so by reading my April column on the amicus brief, the brief itself, and my other earlier columns on foie gras over the years.)

"We noted in our brief that Thomas Jefferson and James Madison opposed bans on various types of foods and liquors as 'lunacy' and 'despotic,'" says Manny Klausner, a former editor of *Reason*, a Reason Foundation co-founder and board member, and attorney who joined me on the Reason/Cato amicus brief. "The Supreme Court's denial of cert. is a sad occasion for those who support Free Minds and Free Markets."

"The Supreme Court laid an egg with its decision not to review California's foie gras ban," says Ilya Shapiro, director of the Robert A. Levy Center for Constitutional Studies at the Cato Institute, who, like Klausner, joined me on the Reason/Cato brief. "I'm not a big fan of the stuff myself—I prefer goose liver pate—but reasonable people should be able to disagree on matters of good taste without running afowl of the law. Nanny statism is for the birds!"

In the amicus brief and elsewhere—including [this O.C. Register](#) op-ed last year—I've argued that the implications and reverberations of the foie gras case extend well beyond foie gras and could ensnare almost any conceivable animal product, including beef, pork, and chicken.

The concerns I expressed then are even more apparent today given that the Supreme Court—also this week—rejected [challenges](#) to two [separate](#) animal-rights laws in Massachusetts and California that, just like the foie gras ban, serve as unconstitutional impediments to interstate commerce in animal products. (The laws, while different from one another, restrict the ability of farmers to cage egg-laying hens and other livestock.)

Interfering with interstate commerce is exactly what these laws intend and what they do. Consider that a [poll](#) (much touted among animal-rights groups) last year found nearly half of respondents want to ban slaughterhouses and so-called "factory farming." A full one-third of Americans, the poll claims, want to ban *all* livestock farming. Period. A ban on livestock farming would mean that nearly *all* animal-derived foods—from prime rib to pork chops, bacon, and chicken McNuggets—would disappear for good.

Again, that's by design. A Vox [piece](#) in November that discussed a new book, *The End of Animal Farming*, details how the book "lays out the steps, over the next century, to end the farming of animals."

(Notably, Americans ate record amounts of meat last year, while rates of veganism and vegetarianism continue to [stagnate](#).)

But there's more. With the foie gras ban and the Massachusetts and California animal-rights laws allowed to stand—for now, at least—I have little doubt that other U.S. states where livestock farming and exports of animal products play a leading economic role will find creative ways to retaliate against California and Massachusetts. Animal rights supporters might not like these laws so much. Lawmakers in a state impacted by California's animal-rights laws, say, might pass a law that says all eggs sold in their state may come only from *caged* hens. (Any old justification would do, but let's go with the food-safety argument that they're [more hygienic](#) than eggs from free-roaming chickens.) Such a law would effectively spell the end of California egg exports to that state.

Or, as I suggested in a 2014 [column](#), states concerned about the environmental challenges and consequences of growing foods in drought-prone areas might pass a law that no food or beverage sold in that state may be produced in a drought-stricken or -prone region. Farmers in California—America's largest agricultural producer by far, but also one of its [most drought-prone states](#)—would be out of luck. So, too, would the winemakers and beer producers who contribute [hundreds of billions of dollars](#) to the state's economy. But such a law would be a tremendous boon for foods and beverages produced in other states and in foreign countries. The law would also carry a [false veneer of green lawmaking](#) that would be sure to drive California policymakers mad.

Would I approve of laws like these? Hell no. Not ever. That's one reason I'm frustrated by the Supreme Court's failure to take up the trio of food freedom cases this week. It increases chances we'll see more such laws (and the inevitable legislative reprisals), and that cycle will harm consumers, farmers, interstate commerce, and businesses of all sizes.

What's next for the challenge to California's foie gras ban? Well, the case has taken years already to wind its way through federal court. The suit was first filed in U.S. District Court in 2012, the day after the foie gras ban took effect. That court granted summary judgment, striking down the ban. But the Ninth Circuit Court of Appeals reversed the District Court's ruling in 2017. Now the same U.S. District Court will hear the case.

Federal legislative solutions are wanting. A bill that would strike down state bans on interstate commerce such as those in California and Massachusetts has gone nowhere, thanks largely to the fact that its sponsor is unapologetic racist Steve King (R-Iowa).

I don't care if a person eats foie gras or hates it like the devil. I've taken an active role defending the rights of vegan groups and others when government unconstitutionally restricts their rights in favor of meat producers. Why? Because the Constitution protects every person's right to eat meat or vegetables (or both!) with equal vigor. Any day now, courts must recognize this simple fact.