

No. 21-468

IN THE
Supreme Court of the United States

NATIONAL PORK PRODUCERS COUNCIL, *et al.*,

Petitioners,

v.

KAREN ROSS, IN HER OFFICIAL CAPACITY AS
SECRETARY OF THE CALIFORNIA DEPARTMENT
OF FOOD & AGRICULTURE, *et al.*,

Respondents.

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

**BRIEF FOR *AMICUS CURIAE* PROTECT
THE HARVEST IN SUPPORT
OF PETITIONERS**

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QUESTION PRESENTED

Whether Proposition 12, an anti-meat law with no verifiable health or safety purpose, violates the dormant Commerce Clause by extending California's local police powers extraterritorially to impose national animal confinement standards on the other 49 states?

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INTEREST OF *AMICUS CURIAE*¹

Protect the Harvest is a nonprofit organization that promotes agriculture, animal welfare, animal ownership, and favorable food security policies in the United States. As part of its mission, Protect the Harvest educates the public about animal extremists and anti-agriculture groups working to promote laws, regulations, and misinformation that negatively impact the agriculture industry.

Protect the Harvest has a history of filing *amicus* briefs in cases that affect animal-related legal issues, including in this Court in *Food Marketing Institute v. Argus Leader Media*, 139 S.Ct. 2356 (2019). The pending case is important to *amicus* because Proposition 12 would have detrimental impacts on animal maintenance and ownership issues generally, and more particularly within the pork industry. Further, Proposition 12 was enacted in large part due to the efforts of animal extremist groups that seek to eliminate the global consumption of meat. *Amicus* presents facts that bring to the Court's attention these groups' underhanded tactics in furtherance of their goal. *Amicus* also presents legal arguments that support application of the dormant Commerce Clause in this case as advocated by Petitioners.

1. Pursuant to Supreme Court Rule 37.3(a), all parties have consented to the filing of this brief.

Pursuant to Supreme Court Rule 37.6, *amicus* affirms that no counsel for any party authored this brief in whole or in part, and that no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus*, its members, or its counsel made a monetary contribution to this brief's preparation or submission.

SUMMARY OF THE ARGUMENT

The Humane Society of the United States (“HSUS”) and other animal rights groups involved in this litigation have utilized the state ballot process to advance an anti-meat agenda, often through deceptive marketing campaigns and the spread of misinformation to voters. The California law at-issue here—drafted and petitioned by HSUS in 2017—is the latest example of these efforts.

HSUS and these other groups promoted Proposition 12 to California voters as animal welfare legislation with a health and safety benefit. Yet, the law does not actually improve animal welfare and, as acknowledged by its regulatory impact assessment, serves no demonstrable health and safety protections. Rather, the law only serves to compromise the Nation’s food security based on scientifically unfounded housing standards that were arbitrarily created by HSUS. Further, Proposition 12’s true purpose—an end to domestic meat consumption—is a sentiment not shared by an overwhelming majority of U.S. citizens.

Proposition 12 is not these groups’ first attempt to push their fanatic ideologies on the general public. HSUS and its allies have a history of employing unsavory tactics—including shock demonstrations, aggressive signature-collecting campaigns, and deceptive marketing—to pass state ballot measures designed to chip away at industries that do not fit within their vision for a meatless future. However, by placing full regulatory authority over the pork industry into the hands of a single state, HSUS’s Proposition 12 presents an unconstitutional overreach that must be rejected. To protect the undisrupted flow

of interstate commerce and ensure a viable food security future for our Nation, this Court should find in favor of the Petitioners and hold that Proposition 12 violates the dormant Commerce Clause.

ARGUMENT

I. PROPOSITION 12 IS AN ANTI-MEAT LAW DISGUISED AS AN ANIMAL WELFARE STATUTE

California and the Respondent-Intervenors have defended Proposition 12 as an animal welfare law.² However, “‘there can be no plausible argument’ that the challenged provision ‘is intended to promote the welfare of animals within California.’” Pet. Br. at 41 (quoting U.S. CA9 Am. Br. at 18). Indeed, other state protections already exist to safeguard against animal cruelty, *see infra* Sec. III, and sow farmers implement a host of hygiene, safety, and animal welfare standards to “provide [sows] with access to water and feed without competition or aggression from other sows . . .” Pet. Br. at 9. Such measures are effective for “reduc[ing] sow stress, injury, and mortality; improv[ing] hygiene by separating food from manure; [and] allow[ing] the farmer to provide individualized food rations and veterinary care . . .” *Id.* Moreover, California is not adequately situated to determine the appropriate welfare standards for sows (or other animals) in every other state across the country, especially when those standards

2. The law also claims to provide a “health and safety benefit” to the citizens of California. As explained below, *infra* Sec. II, the law’s regulatory impact assessment fails to recognize any such benefit, and California has declined to defend the law on this basis.

would implement arbitrary spacing requirements and require out-of-state inspections by California agents. *See* CA Dept. of Food and Agriculture, Animal Health and Food Safety Services’ Proposed Regulations, “Animal Confinement,” Chapter 10, Article 3, Section 1322.3(b).

In reality, Proposition 12 serves as little more than an anti-meat law conceived and promoted by cadres of animal extremists and anti-agriculture organizations that have a well-documented history of calling for an end to all meat production and consumption. Indeed, every intervening party to this litigation³ has, at one time or another, voiced support for the end of meat consumption. While these groups’ recent statements often take a more restrained and calculated approach, many of the personnel charged with leading these organizations have previously expressed an unequivocal—and in some instances repugnant—animus toward the livestock agriculture industry.

Take for instance the abhorrent campaign launched by Matt Prescott, the *current* Senior Director of Food & Agriculture at HSUS,⁴ titled “Holocaust on Your Plate,” in which Mr. Prescott created vivid depictions comparing animal-farming practices to the atrocities committed by Nazi soldiers in concentration camps during World War II. *See PETA Launches “The Holocaust on Your Plate” Campaign*, available at <https://brian.carnell.com/>

3. This group consists of the Humane Society of the United States, the Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, and Animal Outlook.

4. *See* <https://matthewprescott.com/> (last accessed June 15, 2022).

articles/2003/peta-launches-the-holocaust-on-your-plate-campaign/ (last accessed June 10, 2022). In promoting the campaign, Mr. Prescott publicly stated, “Anybody who eats meat is guilty of holding the same mindset that allowed the Holocaust to happen.” The Washington Free Beacon, *New Ad Attacks Animal Rights Fanatics for Evoking Holocaust, Slavery* (July 29, 2015), available at <https://freebeacon.com/issues/new-ad-attacks-animal-rights-fanatics-for-evoking-holocaust-slavery/>.

Additionally, the Humane League’s founder and former Executive Director, Nicholas Cooney,⁵ has launched numerous violent campaigns against the animal agriculture and animal research industries. In 2006, Cooney was convicted on counts of domestic terrorism and harassment in connection with violent threats made to the child of a pharmaceutical company employee. See Municipal Court of Philadelphia County, Criminal Docket of Nicholas Cooney (November 7, 2006), available at https://consumerfreedom.com/downloads/reference/docs/061108_Cooney.pdf.

While some of these groups’ leaders have taken far less deplorable actions, their past statements are nonetheless explicit in conveying their desires for a meat-free future. For example, Miyun Park, former vice-president for Farm Animal Welfare at HSUS⁶ and co-founder of the vegan activist group Compassion Over Killing (now “Animal

5. See <https://www.activistfacts.com/person/nick-cooney/#:~:text=Cooney%20was%20EVP%20of%20Mercy,%2C%20harassment%2C%20and%20criminal%20conspiracy> (last accessed June 15, 2022).

6. See <https://www.fao.org/ag/againfo/themes/animal-welfare/aw-direc/search/detail/en/c/8779/> (last accessed June 15, 2022).

Outlook”),⁷ stated at an Animals & Society Institute conference, “We don’t want any of these animals to be raised and killed [for food] . . . [U]nfortunately, we don’t have the luxury of waiting until we have the opportunity to get rid of the entire industry.” *See* National Canine Research Association of America, *Quotes from HSUS leaders*, <https://ncraoa.com/hsus-quotes/> (last accessed June 10, 2022).

Former president of HSUS, Wayne Pacelle,⁸ has likewise stated, “We want Americans to eat fewer animals,” and “We have no problem with the extinction of domestic animals.” *See* Exhibit No. 2, Montana Senate Local Govt. Comm. Hearing on H.B. 379 (March 18, 2019), available at <https://leg.mt.gov/bills/2019/Minutes/Senate/Exhibits/los55a02.pdf> at 11. *See also* <https://ncraoa.com/hsus-quotes/> (last accessed June 15, 2022). In discussing HSUS’s process for achieving these goals, Pacelle explained that “[people] know that no group has passed more ballot measures than we have. They know we have a focused strategy. They know we have a budget of \$150 million a year. And they know we’re ready for a fight.”⁹ *Los Angeles Times*, *Egg-farm video is latest salvo in Humane Society’s animal-rights campaign* (April 7,

7. *See* <https://www.activistfacts.com/person/3591-miyun-park/> (last accessed June 15, 2022).

8. *See* <https://www.linkedin.com/in/waynepacelle/> (last accessed June 15, 2022).

9. HSUS’s annual support and revenue for 2021 was reported to be over \$312,000,000, more than double what it was at the time of Mr. Pacelle’s statements in 2010. *See* Humane Society 2021 Annual Report at p. 31, available at https://www.humanesociety.org/sites/default/files/docs/HSUS-HSI_AR21.pdf (last accessed June 15, 2022).

2010), <https://www.latimes.com/archives/la-xpm-2010-apr-07-la-fi-eggs8-2010apr08-story.html>. Co-founder of Farm Sanctuary, Gene Baur,¹⁰ has on multiple occasions publicly and vehemently denounced the factory farming industry and has starred in several anti-meat documentaries, including “The End of Meat” in 2017. *See* <https://www.imdb.com/title/tt5859140/> (last accessed June 14, 2022). Baur has also been quoted as saying, “I dream of a vegan world – that’s where I want everything to go.” National Animal Interest Alliance, *Quotes from the Leaders of the Animal Rights Movement*, <https://www.naiaonline.org/articles/article/quotes-from-the-leaders-of-the-animal-rights-movement#sthash.n4X84SBY.Z0DKxDJC.dpbs> (last accessed June 13, 2022).

Co-founder of the Animal Legal Defense Fund (“ALDF”), Joyce Tischler,¹¹ has written numerous articles detailing a meat-free future, and once stated that “[f]rom [ALDF’s] perspective, the reality is that we need [to] move away from meat-eating at the level that it is *and hopefully altogether*.” Earth Island Journal, “*We Are All Complicit*”, available at <https://www.earthisland.org/journal/index.php/magazine/entry/we-are-all-complicit> (last accessed June 10, 2022) (emphasis added).

President of Animal Equality, Sharon Núñez,¹² requested of her Instagram followers in April 2022, “On

10. *See* <https://www.farmsanctuary.org/about-us/leadership/> (last accessed June 15, 2022).

11. *See* <https://aldf.org/person/joyce-tischler/> (last accessed June 15, 2022).

12. *See* <https://www.linkedin.com/in/sharon-nu%C3%B1ez-gough-b31b9a98/> (last accessed June 15, 2022).

#earthday and beyond please leave animals off your plate.” See <https://www.instagram.com/p/CcqdGDLJeHK/> (last accessed June 10, 2022).

Compassion in World Farming’s senior campaigns manager, Sarah Moyes,¹³ stated in conjunction with a petition for new UK policies to drive down demand in meat and dairy consumption:

We must drastically reduce our total global meat and dairy consumption, so we’ve addressed our petition to leaders of top meat-consuming countries or regions. It’s crucial these world leaders act to bring forward a meat and dairy reduction and support a shift to nature-friendly, higher welfare [*i.e.*, vegan] farming, as a matter of urgency.

The Cattle Site, *Compassion in World Farming urges global meat, dairy reduction* (May 15, 2022), available at <https://www.thecattlesite.com/news/58533/compassion-in-world-farming-urges-global-meat-dairy-reduction/>.

Although the quotes above clearly illustrate these groups’ firmly held anti-meat beliefs, they are not easily discoverable and require extensive research to pull together. Several of these groups, and particularly HSUS, are far from transparent about their hopes for a vegan future. Instead, HSUS portrays itself to the public as

13. See https://www.linkedin.com/in/sarah-moyes-b6319332/?original_referer=https%3A%2F%2Fwww%2Egoogle%2Ecom%2F&originalSubdomain=uk (last accessed June 15, 2022).

helping to “end suffering for all animals,” while making no mention in its mission statement of the desire to see a meatless society. *See* “*Our Mission*,” available at <https://www.humanesociety.org/our-mission> (last accessed June 13, 2022).

It is not difficult to discern why these groups choose to hide their anti-meat agendas from the public, as recent studies have revealed that the vast majority of U.S. citizens clearly enjoy consuming meat as part of their regular diet. *See* Ipsos, *Nearly nine in ten Americans consume meat as part of their diet*, available at <https://www.ipsos.com/en-us/news-polls/nearly-nine-ten-americans-consume-meat-part-their-diet> (“A [May 2021] Ipsos poll finds that 89% of Americans include meat as part of their diet. The poll also shows that . . . those pushing to take red meat off the menu are trying to control what Americans eat.”) (last accessed June 10, 2022).

Well aware that the majority of voters would not willingly support laws with an express purpose of “ending meat consumption,” some of these groups (namely HSUS) have utilized deceptive techniques to advance state ballot measures like Proposition 12,¹⁴ including

14. HSUS initiated Proposition 12 on August 27, 2017 through Cheri Shenker, an HSUS National Council Member. *See* Request for Title and Summary for Proposed Initiative Statute, submitted by Cheri Shankar, available at https://www.oag.ca.gov/system/files/initiatives/pdfs/17-0026%20%28Animal%20Cruelty%29_0.pdf (last accessed June 10, 2022). *See also* <https://www.flickr.com/photos/humanesociety/3410733860> (Shankar HSUS National Council Member) (last accessed June 15, 2022).

“shock” demonstrations,¹⁵ harassing signature-gathering campaigns and the spread of misinformation to influence potential voters.¹⁶ Thus, under the guise of democratically passed legislation as so-called animal welfare laws, Proposition 12 actually operates contrary to what the public wants, and in doing so attempts to utilize one state’s ballot process to impose national anti-meat standards—a direct violation of the dormant Commerce Clause.

Proposition 12 does not represent HSUS’s first foray against the livestock industry via a ballot initiative. HSUS has intentionally appropriated the state law-making

15. In 2013, the Humane Society conducted a demonstration before hundreds of public bystanders in which a young woman was restrained, force-fed, and injected with cosmetics as part of a campaign against animal lab testing. As part of the demonstration, the 24-year old was “pinned down on a bench and had her mouth stretched open with two metal hooks while a man in a white coat force-fed her until she choked and gagged.” Animal Bliss, *Humane Society Shocking Human Display Protests Against Animal Testing* (December 21, 2013), available at <https://www.animalbliss.com/humane-society-shocking-human-display-protests-against-animal-testing/>.

16. In 2014, Maine’s state director for HSUS admitted to leading a network of roughly 100 volunteers to gather signatures for a bear baiting ban petition, in addition to coordinating with a Los Angeles-based consulting firm that paid others to gather signatures. This campaign led to numerous complaints regarding false information being spread by these signature-gatherers, including footage of a signature solicitor depicting the petition as a dog-safety bill and misidentifying the type of trap at-issue in the petition. Sun Journal, *Signature-gathering tactics by bear baiting opponents come under fire* (January 16, 2014), available at <https://www.sunjournal.com/2014/01/16/signature-gathering-tactics-bear-baiting-opponents-come-fire/>.

process to launch piece-meal campaigns designed to chip away at any industry that does not fit within their extreme world-views. This approach was previously devised by HSUS to dismantle the recreational hunting sector in a manner best explained by HSUS's former president, Wayne Pacelle: "We are going to use the ballot box and the democratic process to stop all hunting in the United States . . . We will take it species by species until all hunting is stopped in California. Then we will take it state by state." Full Cry Magazine, October 1, 1990, *see* <https://ncraoa.com/hsus-quotes/> (last accessed June 15, 2022). Pacelle also has been recognized as the chief architect of Proposition 12,¹⁷ and (until his resignation in 2018) for nearly twenty years he led HSUS in employing this approach to undermine the animal agriculture industry.

HSUS's first "victory" in its anti-meat campaigns came in 2002, with a ballot measure that prohibited the in-state confinement of pregnant pigs in gestation crates. Fla. Const. art. X, §21. Florida served as an ideal testing ground for HSUS to apply its approach to the livestock sector, as the state contained only two pork producers. Just four years later, HSUS would go on to lead a successful ballot proposition targeting the veal industry in addition to pork production. Ariz. Rev. Stat. Ann. §13-2910.07. After two more similar campaigns in Colorado and Oregon, in 2008, HSUS led its first California campaign in this arena in the form of Proposition 2, expanding its scope to include egg producers. Cal. Health & Safety Code § 25990 (West 1999 & Supp. 2009). With each new ballot

17. *See* Proposition 12, *Official Title and Summary* at 70, available at <https://reason.org/wp-content/uploads/ca2018prop12.pdf> (last accessed June 15, 2022).

proposition, HSUS was broadening its range of targeted animal agriculture participants as part of a purposeful (and well-funded) effort. However, to this point each measure remained focused solely on in-state producers.

Then in 2016, HSUS expanded its methodology to include out-of-state activities. HSUS's proposition ballot "Question 3," which eventually became Massachusetts' Prevention of Farm Animal Cruelty Act, closely mirrors the language found in Proposition 12 and makes illegal the sale within Massachusetts of any "[w]hole pork meat that the business owner or operator knows or should know is the meat of a covered animal that was confined in a cruel manner." *See* Mass. Gen. Laws Ann. Ch. 129A, §1-3(C). At the time of its passing, Question 3 was declared by HSUS's Wayne Pacelle to be "a powerful punch to agribusiness interests." A Humane World, *Massachusetts voters push farm animal measure to the ballot, with broad, powerful coalition* (June 28, 2016), available at <https://blog.humanesociety.org/2016/06/massachusetts-pushes-farm-animal-confinement-measure-to-ballot.html>. However, the HSUS-backed Proposition 12 now takes Question 3's out-of-state application one step further, prescribing arbitrary minimum spacing requirements under the veil of animal welfare advancement.¹⁸

18. Indeed, even other animal rights organizations, such as PETA and the Humane Farming Society, have opposed Proposition 12 and have recognized that HSUS engages in voter deception. *See* Ballotpedia, *Humane Farming Society statement in opposition to Proposition 12*, available at [https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_\(2018\)](https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_(2018)) (last accessed June 10, 2022) ("HSUS is now misusing our state's ballot measure process with a whole new set of false promises. This betrayal of voters and farm animals must be soundly defeated.").

Notably, these groups' *modus operandi* of moving the goalposts on animal confinement standards does not stop with the state legislative process. As a final tool in its war chest, HSUS uses its more than \$300 million budget to employ "Trojan horse" techniques, whereby the group purchases sufficient shares in publically-traded companies to infiltrate and influence major business decisions aimed at demolishing a particular sector or trade. When these tactics fail, HSUS follows-up with massive public relations campaigns, adverse regulatory filings, and lawsuits designed to embarrass these corporations until its demands are met. With regard to its anti-meat campaign, several large corporations, including restaurant chains and grocers, have experienced these tactics first-hand.

In 2010, after purchasing roughly 100 shares of McDonald's stock, HSUS proposed a shareholder resolution for the company to require its U.S. pork suppliers to phase out the use of sow gestation stalls. Following two years of legal battles between HSUS and one of McDonald's pork suppliers, McDonald's ultimately caved to their demands while publically citing the action as a joint effort "supported by the Humane Society of the United States." McDonald's Corporate Statement, *McDonald's Takes Action Toward Ending Gestation Stall Use; Humane Society of the United States Supports Effort* (February 13, 2012), available at https://corporate.mcdonalds.com/corpmcd/en-us/our-stories/article/ourstories.gestation_stall.html.

Ten years later, HSUS demanded that McDonald's force its suppliers to "move to 'crate-free' pork and set specific timeframes for doing so." McDonald's Corporate Statement, *Statement from McDonald's Corporation in Response to Mr. Icahn's Media Outreach* (April 21, 2022),

available at <https://corporate.mcdonalds.com/corpmcd/en-us/our-stories/article/ourstories.mcdonalds-carl-icahn.html>. Yet, as McDonald's acknowledged in a corporate statement: "The definition of "crate-free," conjured up by the Humane Society of the United States (HSUS), is so obscure that it represents an extremely niche market comprising less than 0.1% of U.S. pork production . . . [and] is completely unfeasible." *Id.*

Following this statement by McDonald's, HSUS called on the Securities and Exchange Commission to investigate McDonald's "for deceiving shareholders and the public about its animal confinement policies." MarketWatch, *Humane Society joins Carl Icahn in calls for McDonald's to make good on pig welfare pledge* (April 25, 2022), available at <https://www.marketwatch.com/story/humane-society-joins-carl-icahn-in-calls-for-mcdonalds-to-make-good-on-pig-welfare-pledge-2022-04-22>. In a separate statement responding to HSUS's call for an SEC investigation, McDonald's noted that HSUS's "allegations are completely baseless and constitute nothing more than a familiar stunt . . . to drive fundraising dollars and media attention." *Id.*

Similarly, in 2010, HSUS utilized its 91 shares in Walmart to submit a shareholder proposal regarding Walmart's incorporation of cage-free eggs in all of its stores. *See* Walmart February 18, 2010 Petition to the SEC at 15, available at <https://www.sec.gov/divisions/corpfin/cf-noaction/14a-8/2010/humanesociety021910-14a8.pdf> (last accessed June 15, 2022). Walmart petitioned the SEC to omit this proposal from the proxy materials for its annual shareholder meeting, stating that: "The Company does not produce any of the shell eggs it sells in the United

States, nor does it own or otherwise control any of the . . . producers from which [it] purchases shell eggs . . . However, the Company buys shell eggs only from those producers whose eggs are certified [by national animal welfare guidelines].” *Id.* at 8. HSUS formally challenged Walmart’s SEC petition (in tandem with a relentless public relations campaign), and Walmart ultimately conceded. *Id.* at 3.

Five years later, HSUS secured a commitment from Walmart that the grocer would urge its meat, seafood, poultry, and egg suppliers to adopt more stringent animal welfare standards than those it was previously adhering to. *See* New York Times, *Walmart Pushes for Improved Animal Welfare* (May 23, 2015), available at <https://www.nytimes.com/2015/05/23/business/walmart-pushes-for-improved-animal-welfare.html>. Nevertheless, HSUS awarded Walmart a grade of “F” in its most recent “Food Industry Scorecard” due to its concern “with Walmart’s level of commitment to animal welfare and what seems like a lack of action taken toward meeting its goals.” *See* HSUS Food Industry Scorecard at 85, available at <https://www.humanesociety.org/sites/default/files/docs/Scorecard.pdf> (last accessed June 15, 2022). Now, through Proposition 12, HSUS has circumvented this latest agreement, forcing Walmart—along with every other grocer in California—to abide by its demands.

The tactics employed by HSUS and its allies are well-funded, highly motivated and deftly executed, and they are often utilized in a manner not readily understood by the general public.¹⁹ Through Proposition 12, these groups

19. As another example of how HSUS miscommunicates its intent to the public, a 2012 poll showed that “71% of Americans

have bypassed the values of a majority of U.S. citizens—using a single state to nationalize arbitrary animal confinement standards intended to end meat consumption in this country. In short, the dormant Commerce Clause must remain the shield against such tactics.

II. PROPOSITION 12 ALSO SERVES NO HEALTH OR SAFETY BENEFIT

Most of the laws advanced by HSUS and its supporters are void of any legitimate local interest to justify the onerous burdens they place on interstate commerce. Moreover, these laws are rarely based in science, research, or other factual bases, and instead often are fueled by misleading information used to sway sympathetic voters and support these organizations' self-serving agendas.

believe that the HSUS is an umbrella organization for local Humane Society pet shelters nationwide”; yet, HSUS does not manage a single animal shelter in the United States. *See* Washington Examiner, *Critics question spending by Humane Society of the United States* (January 9, 2012), available at <https://www.washingtonexaminer.com/critics-question-spending-by-humane-society-of-the-united-states>. *See also* <https://www.humanesociety.org/resources/shelters-and-rescues-faq> (last accessed June 13, 2022). Such confusion is understandable, as HSUS has created a façade that much of its work concerns the well-being of domestic pets, such as cats and dogs. Despite HSUS's claims that it is “fighting to end suffering for all animals,” much of its public fundraising activities utilize pictures of suffering or malnourished pets, including a picture of a chained dog *directly adjacent* to a donation link on its main website. *See* HSUS Home Page, available at <https://www.humanesociety.org> (last accessed June 15, 2022).

For instance, Proposition 12 was presented to the voters of California as a measure meant “to prevent animal cruelty by phasing out extreme methods of farm animal confinement, *which also threaten the health and safety of California consumers, and increase the risk of food-borne illness* and associated negative fiscal impacts on the State of California.” Prop 12. § 2 (emphasis added). While state police powers have long been recognized to include the authority to make laws for public health and safety, those laws must *clearly* advance a health and safety purpose. *See Kassel v. Consol. Freightways Corp. of Del.*, 450 U.S. 662, 670 (1981) (plurality) (“[T]he incantation of a purpose to promote the public health or safety does not insulate a state law from Commerce Clause attack.”). And even state laws “designed for that salutary purpose [of protecting health and safety] nevertheless may further the purpose so marginally, and interfere with commerce so substantially, as to be invalid under the Commerce Clause.” *Id. See also Raymond Motor Transp., Inc. v. Rice*, 434 U.S. 429, 443-47 (1978) (overcoming presumption of validity of safety-related regulations).

Proposition 12’s Standardized Regulatory Impact Assessment (“SRIA”)—which forms part of the public record and was performed to ascertain, in part, the costs and benefits associated with Proposition 12’s proposed regulations—acknowledges that “[t]he scientific literature is not yet conclusive on links between animal housing space allocation, such as cage size, and human food-borne illness, worker safety, environment, viruses, and other transmittable diseases, or other human health, or safety.” SRIA at 57, available at https://dof.ca.gov/wp-content/uploads/Forecasting/Economics/Documents/C DFA_Proposition_12_SRIA.pdf (last accessed June

15, 2022). Well aware of these inconsistencies, California has “consistently and expressly declined to defend” Proposition 12 as a health and safety measure. *See* U.S. CA9 Am. Br. at *19.

Rather, the interests actually advanced by Proposition 12 are subjective and unquantifiable. As the SRIA explains, Proposition 12 merely offers California citizens “hard-to-quantify benefits²⁰ such as moral satisfaction, peace of mind, [and] social approval.” *Id.* While a state may be allowed to use its police powers to advance the morals of its citizens, *Stone v. Mississippi*, 101 U.S. 814, 818 (1879), such morals cannot be advanced to the detriment of citizens in other states. *See Healy v. Beer Inst.*, 491 U.S. 324, 336 (1989) (“[T]he practical effect of the statute must be evaluated . . . by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation.”). Indeed, it is a violation of the dormant Commerce Clause “when a state law directly affects transactions that take place across state lines or entirely outside of the state’s borders.” *S.D. Myers, Inc. v. City & County of San Francisco*, 253 F.3d 461, 467 (9th Cir. 2001) (citation omitted).

20. Meanwhile, food security is easily quantifiable. A 2014 study referenced by California’s “Let’s Get Healthy California” Task Force shows that “there are 5.4 million Californians that are food insecure – meaning they have uncertain access to enough food to eat.” Let’s Get Healthy California, *Food Security*, available at <https://letsgethealthy.ca.gov/food-security/> (last accessed June 13, 2022). Proposition 12 only serves to exacerbate this predicament, as the cost of compliance is estimated to create a 9.2% increase for the price of pork. Pet. Br. at 15.

III. CALIFORNIA MAY HAVE A RIGHT TO ENFORCE ITS POLICE POWERS WITH REGARD TO ANIMAL WELFARE, BUT SO DOES EVERY OTHER STATE

While often expansive, a state's traditional police powers are subject to limitations, especially when a state's actions would interfere with another state's ability to enforce its own police powers. *See C&A Carbone, Inc. v. Town of Clarkstown*, 511 U.S. 383, 393 (1984) (imposition of ordinance "would extend the town's police power beyond its jurisdictional bounds"). *See also Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 615 (9th Cir. 2018) ("One state cannot be permitted to dictate what other states must do within their own borders.").

Here, not only does Proposition 12 cut directly against foundational principles of free and unencumbered commerce between the fifty states, but the law also attempts to place California's interests above the interests of all other states. *All* fifty states already implement some form of anti-cruelty laws for domestic animals. The National Agricultural Law Center, *States' Animal Cruelty Statutes*, available at <https://nationalaglawcenter.org/state-compilations/animal-cruelty/> (last accessed June 10, 2022). Yet, Proposition 12's requirements are intrusive, and represent an unprecedented overreach by California to control the legitimate interests of its fellow states on the matter of animal cruelty.²¹

21. Merely days ago, the N.Y. Court of Appeals cited the myriad of anti-cruelty and positive animal welfare laws on the books in the State of New York in shooting down yet another extreme goal of animal activists in seeking to have an elephant protected by common law *habeas corpus*. *In the Matter of*

The United States Department of Agriculture, which enforces several national public policies related to the slaughter of animals, also acknowledges that animal cruelty laws should be based on the policies of the individual states. *See* U.S. Dep’t of Agriculture, National Agricultural Library, *State and Local*, available at <https://www.nal.usda.gov/legacy/awic/state-and-local> (last accessed June 15, 2022) (“all states have established their own animal welfare and anti-cruelty laws in addition to the current federal laws.”). Indeed, California’s Proposition 2 was respectful of other states’ laws, limiting its standards to a farmer or operator managing their livestock (including sows raised for pork production) *within the state*. Cal. Health & Safety Code § 25990 (West 1999 & Supp. 2009) (emphasis added). Proposition 12, by contrast, presents an unconstitutional overreach by attempting to regulate the conduct of out-of-state farmers.

Moreover, “[f]orcing a merchant to seek regulatory approval in one State before undertaking a transaction in another [state] directly regulates interstate commerce [in violation of the dormant Commerce Clause].” *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 582 (1984). Nevertheless, California’s proposed regulations for Proposition 12 would require out-of-state pork producers to provide California agents with access to their livestock facilities for mandatory inspections. *See* CA Dept. of Food and Agriculture, Animal Health and Food Safety Services’ Proposed Regulations, “Animal Confinement,” Chapter 10, Article 3, Section 1322.3(b) (“Every pork distributor...

Nonhuman Rights Project, Inc. v. Breheny, No. 2020-02581, slip op. at 14-16 (N.Y. June 14, 2022).

agrees as a condition of registration to provide the Department, and/or certifying agent, entrance and access *to the premises* and business records of the facility for purposes of inspection and audit . . .”) (emphasis added). Simply put, California cannot justify Proposition 12’s expansive reach based on its traditional police powers when doing so would usurp the police powers of all other states.

CONCLUSION

Proposition 12 violates the dormant Commerce Clause. This Court should rule in favor of Petitioners by overturning the Ninth Circuit’s opinion below.

Respectfully submitted,

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