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 ASSOCIATION OF CALIFORNIA EGG FARMERS IN SUPPORT OF RESPONDENTS

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CORPORATE DISCLOSURE STATEMENT

The Association of California Egg Farmers has no parent company, and no publicly held company owns 10% or more of its stock.

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INTEREST OF AMICUS CURIAE

Amicus curiae Association of California Egg Farmers (ACEF) is a California nonprofit trade organization whose members are family-owned-and-operated egg farms.[1] ACEF's members constitute a significant portion of the California egg industry. It is estimated that they are responsible for more than 70% of the commercial egg-laying hens in California. Some of ACEF's members also produce eggs outside of California and import eggs into the State. ACEF's members therefore are subject to the requirements for sales and production of eggs in California that were adopted by the citizens of California in Proposition 12 and codified in California Health and Safety Code §§ 25990-25993.1. ACEF's principal purposes are to engage in advocacy regarding policies affecting the egg-farming industry and to ensure the continued production of fresh and affordable eggs that meet the food-safety and animal-care standards that consumers expect.

ACEF participated in this litigation in the Ninth Circuit and district court as an amicus curiae in support of Respondents' successful motion to dismiss. ACEF was previously a defendant-intervenor in a prior unsuccessful dormant Commerce Clause challenge to California Health and Safety Code § 25996, which prohibits the sale in California of eggs that the seller knows or should have known are the product of an egg-laying hen that was confined not in compliance with the animal-

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[1] No counsel for a party authored this brief in whole or in part, and no entity or person, other than amicus curiae, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this brief.

care standards contained in California Health and Safety Code § 25990.[2] ACEF also participated as an amicus curiae in another unsuccessful Dormant Commerce Clause challenge to California Health and Safety Code § 25996 that was filed as an original action in the United States Supreme Court.[3] ACEF brings a unique perspective to this case because of its experience and knowledge of agricultural markets and regulation.

SUMMARY OF ARGUMENT

Petitioners seek an unprecedented expansion of the dormant Commerce Clause, attempting to turn a narrow and rarely invoked exception into a sweeping doctrine that would stop States from enacting even-handed legislation to protect their citizens. But the extraterritoriality principle on which Petitioners rely does not apply to regulations of in-state sales like Proposition 12's pork provisions. This Court has invoked extraterritoriality only in the narrow context of blatant exercises of economic protectionism not at issue here, such as price control or affirmation statutes designed to inhibit interstate price competition. Drastically expanding the extraterritoriality doctrine would unduly restrict States' ability to protect the health and safety of their citizens.

Proposition 12 also survives *Pike* balancing. Petitioners overstate the burdens of Proposition 12's pork regulations by incorrectly assuming that the costs will

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[2] *See Missouri* v. *Harris*, 58 F. Supp. 3d 1059 (E.D. Cal. 2014) (dismissing for lack of standing); *Missouri ex rel. Koster* v. *Harris*, 847 F.3d 646 (9th Cir. 2017) (affirming dismissal), *cert. denied sub nom. Missouri ex rel. Hawley* v. *Becerra*, 137 S. Ct. 2188 (2017).

[3] *See Missouri* v. *California*, 139 S. Ct. 859 (2019) (Mem.) (declining review).

fall on out-of-state producers and consumers when, in reality, the costs will be borne by California consumers. Moreover, because Proposition 12 does not regulate the market for pork in other States, it leaves producers free to choose whether to supply the California market based on whether it is economically beneficial to do so.

The egg-related provisions of Proposition 12 are not before this Court, but the egg industry's experience suggests that the transition will be manageable for the pork industry. California egg producers have already significantly increased production of eggs from cage-free hens in response to earlier laws and regulations. The effect has been to accelerate producers' adoption of standards favored by consumers, as reflected by the cage-free egg policies adopted by most major egg retailers nationwide.

In any event, any burden imposed by Proposition 12's pork provisions would not be clearly excessive in relation to Proposition 12's benefits. ACEF will not repeat Intervenor Respondents' lengthy discussion of the health and safety benefits of Proposition 12's pork regulations. But those arguments are consistent with the substantial health benefits of the egg-related provisions in Proposition 12 and earlier laws, which were supported by scientific studies showing a link between production methods and foodborne illness.

Finally, although these egg examples help illustrate the importance of preserving States' authority to regulate in-state sales of food products, Proposition 12's egg-related provisions have not been challenged and are not before the Court. Indeed, because Petitioners lack standing to challenge the egg provisions, this Court does not have jurisdiction to address them. Accordingly, in the event the Court were to find any in-

firmity in Proposition 12's pork provisions, it should take care to clarify that its ruling does not extend to Proposition 12's egg-related provisions.

ARGUMENT

I. PROPOSITION 12 DOES NOT VIOLATE THE DORMANT COMMERCE CLAUSE

"The modern law of what has come to be called the dormant Commerce Clause is driven by concern about 'economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" *Department of Rev. of Ky.* v. *Davis*, 553 U.S. 328, 337–338 (2008) (quoting *New Energy Co. of Ind.* v. *Limbach*, 486 U.S. 269, 273-274 (1988)). Proposition 12 does not implicate these concerns. It regulates even-handedly, applying the same requirements to all in-state sales of pork and egg products regardless of where they are produced. Moreover, Proposition 12 does not require out-of-state producers to do anything. It merely regulates the California market, leaving it to producers to decide whether it is in their economic interest to sell into that market or take their products elsewhere.

The Court has long respected the "need to accommodate state health and safety regulation in applying dormant Commerce Clause principles." *General Motors Corp.* v. *Tracy*, 519 U.S. 278, 306 (1997). It has thus "consistently recognized the legitimate state pursuit of such interests as compatible with the Commerce Clause, which was 'never intended to cut the States off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.'"

Id. (quoting *Huron Portland Cement Co.* v. *Detroit*, 362 U.S. 440, 443-444 (1960)).

Conceding that Proposition 12 applies equally to in-state and out-of-state producers, Petitioners invoke one of the "exceptions and variations" mentioned in *South Dakota* v. *Wayfair, Inc.*, 138 S.Ct. 2080, 2090-2091 (2018)—the so-called extraterritoriality principle applied in *Brown–Forman Distillers Corp.* v. *New York State Liquor Authority*, 476 U.S. 573 (1986). But Petitioners' misapplication of that principle would transform it into a far-reaching rule that would prevent States from protecting the health and safety of their citizens. *Cf. Tracy*, 519 U.S. at 306. The Court's extraterritoriality cases lend no support such a dramatic expansion of the dormant Commerce Clause.

Petitioners' invocation of *Pike* balancing fares no better. As discussed below, Proposition 12 provides California citizens with significant health and safety benefits, and any alleged compliance burdens are not clearly excessive in relation to these benefits.

A. Proposition 12's Regulation Of In-State Sales Does Not Regulate Extraterritorial Conduct

Proposition 12 does not violate the dormant Commerce Clause by regulating extraterritorial conduct. Over thirty years have passed since the Court invalidated a state statute on extraterritoriality grounds. *See Healy* v. *Beer Inst.*, 491 U.S. 324 (1989). Indeed, the principle rarely appeared in the Court's twentieth century opinions. None of the extraterritoriality cases on which Petitioners rely supports invalidating Proposition 12.

Unlike Proposition 12, the state laws in *Baldwin* v. *Balwin*, 294 U.S. 511 (1935) and *Healy* sought to direct-

ly regulate the prices of out-of-state transactions for economic protectionist purposes. *Baldwin* was a price-fixing case in which the Court invalidated a New York law that sought to influence the prices at which milk was sold out-of-state by restricting in-state sales. 294 U.S. at 519. Far from being facially neutral, the state law in *Baldwin* expressly targeted "milk produced outside of the state." *Id.* at 519 n.1. In *Healy*, the Court struck down a Connecticut "price affirmation" law that required "out-of-state shippers [of beer to] affirm that their prices [we]re no higher than the prices being charged in the border States as of the moment of affirmation." 491 U.S. at 335. This "require[d] out-of-state shippers to forgo the implementation of competitive-pricing schemes in out-of-state markets," thereby having "the undeniable effect of controlling commercial activity occurring wholly outside the boundary of the [s]tate." *Id.* at 337, 339. In contrast, Proposition 12 regulates sales *within California* and is "indifferent to sales occurring out-of-state." *Cotto Waxo* v. *Williams*, 46 F.3d 790, 794 (8th Cir. 1995).

The Court's subsequent interpretation of *Baldwin* and *Healy* further undermines Petitioners' reliance on these cases. In its only twenty-first century case that explicitly applied the extraterritoriality principle, the Court limited the principle referenced in *Baldwin* and *Healy* to direct regulation of out-of-state activity, such as through "price control or price affirmation statutes." *Pharmaceutical Research & Manufacturers of America* v. *Walsh*, 538 U.S. 644 (2003). *Walsh* rejected an extraterritoriality challenge to a Maine law that out-of-state drug manufacturers argued impermissibly regulated transactions taking place wholly outside the State—namely, between a drug manufacturer and a wholesaler who would then distribute the drugs to

Maine pharmacies. *Id.* at 649-650, 669. Noting that Maine's law did not "regulate the price of any out-of-state transaction, either by its express terms or its inevitable effect," the Court held that "[t]he rule that was applied in *Baldwin* and *Healy* accordingly is not applicable to this case." *Id.* at 669. The same goes for Proposition 12, which in no way regulates the price of out-of-state transactions.

Petitioners' reliance on *Brown–Forman*, which involved a similar price affirmation law to that in *Healy*, fares no better. In *Brown–Forman*, the Court invalidated a New York law that required liquor producers selling to New York wholesalers to affirm that the prices charged were no higher than the lowest price at which the same liquor was to be sold in any other State during the following month. 476 U.S. at 576. Relying on *Baldwin*, the Court in *Brown–Forman* held that a State may not "insist that producers or consumers in other States surrender whatever competitive advantages they may possess" for protectionist purposes. *Id.* at 580. As then-Judge Gorsuch noted, *Baldwin*, *Healy*, and *Brown–Forman* each involve "(1) a price control or price affirmation regulation, (2) linking in-state prices to those charged elsewhere, with (3) the effect of raising costs for out-of-state consumers or rival businesses." *Energy & Env't Legal Inst.* v. *Epel*, 793 F.3d 1169, 1173 (10th Cir. 2015). Proposition 12 does not link in-state and out-of-state prices, and it does not seek to control wholly out-of-state transactions to "discriminate against out-of-state rivals or consumers" for protectionist purposes. *Id.* Accordingly, *Brown–Forman* is as inapplicable as *Baldwin* and *Healy*.

The present action is also very different from *C&A Carbone* v. *Town of Clarkstown, New York*, 511 U.S.

383, 386 (1994), which addressed a protectionist town ordinance that required all solid waste to be processed at a local facility before leaving the town. Unlike in *Carbone*, Proposition 12 does not seek to regulate the out-of-state use of a product exported from the regulating State. It addresses only in-state sales over which California clearly has jurisdiction. *See Osborn* v. *Ozlin*, 310 U.S. 53, 62 (1940) ("The mere fact that state action may have repercussions beyond state lines is of no judicial significance so long as the action is not within the domain which the Constitution forbids.").

Petitioners also miss the mark in their invocation of *Southern Pacific Co.* v. *Arizona ex rel. Sullivan*, 325 U.S. 761 (1945), to argue that the dormant Commerce Clause prevents state regulations that have the practical effect of "disrupt[ing] a national market" in which there is a "need for uniformity." Petitioners Br. 31-32. In *Southern Pacific*, the Court invalidated an Arizona law that capped the length of trains operating within the State because permitting such laws would result in a disjointed interstate transportation system in which trains would have to be broken down and reassembled at each state border. *See* 325 U.S. at 773. Petitioners claim that Proposition 12's burden on pork producers is "similar[]" due to the alleged lack of traceability of pork products. *See* Petitioners Br. 28, 32. But tracing food products in 2022 poses a much lower threat of undermining necessary market uniformity than does changing train configurations at every state border in 1945.

Claims that tracing is impossible do not withstand scrutiny. Digitization has improved the traceability of food products from farm to fork, including pork products. *See e.g.*, Kamath, *Food Traceability on Blockchain: Walmart's Pork and Mango Pilots with IBM*, 1 The Journal of The British Blockchain Association

(2018) (demonstrating how Walmart successfully implemented a pork-tracing pilot and stating that "[t]raceability is essential in preventing or responding quickly to food contamination, disease, drug or pesticide residues, or attempted bioterrorism").

In the egg market, the USDA Agricultural Marketing Service "requires a written and implemented segregation and traceability plan detailing how the company maintains the identity of the eggs from production through storage, transport, processing, and packaging. Then, during packing, AMS verifies that only eggs sourced from the appropriate flocks are packaged into cartons bearing a USDA Grade Shield." USDA-AMS, *USDA Graded Cage-Free Eggs: All They're Cracked Up To Be*, https://tinyurl.com/2p8w5jzx (last accessed Aug. 12, 2022). The Food and Drug Administration has also proposed a rule that will require shell eggs to be traced through "critical tracking events in the supply chain … such as growing, shipping, [and] receiving." *Requirements for Additional Traceability Records for Certain Foods*, 85 Fed. Reg. 59,984, 59,984 (Sept. 23, 2020). The United Kingdom has already implemented similar egg tracing measures. *See* United Kingdom Department for Environment, Food & Rural Affairs & Animal & Plant Health Agency, *Guidance, Eggs: marketing and trade*, (July 2, 2020), https://www.gov.uk/guidance/eggs-trade-regulations.

In any event, Petitioners' practical effect argument is refuted by this Court's decision in *CTS Corp.* v. *Dynamics Corp. of America*, 481 U.S. 69 (1987). In *CTS*, the Court upheld an Indiana statute which conditioned the acquisition of control of an Indiana corporation on the approval of a majority of the pre-existing disinterested shareholders. While the Indiana statute had the practical effect of applying "most often to out-of-state

entitles" because "most hostile tender offers [we]re launched by offerors outside Indiana," the Court rejected the notion that the Indiana statute's primarily extraterritorial effect rendered it unconstitutional. *Id.* at 88 ("The fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." (quoting *Exxon Corp.* v. *Governor of Md.*, 437 U.S. 117, 126 (1978))).

Petitioners' sweeping version of the extraterritorially principle would substantially curtail States' ability to enact even-handed legislation that protects their citizens and should be rejected. Most exercises of state police power have an impact beyond state borders in our modern economy, and thus "courts and commentators … have cautioned against approaches like the one that [Petitioners] advocate[] here." *Online Merchants Guide* v. *Cameron*, 995 F.3d 540, 559 (6th Cir. 2021).

For example, concurring in *Healy*, Justice Scalia labeled the extraterritoriality principle "both dubious and unnecessary to decide the present cases" and stated that he did not think that "Commerce Clause jurisprudence should degenerate into disputes over degree of economic effect." 491 U.S. at 345 (Scalia, J., concurring). As then Judge Gorsuch noted, a broad extraterritoriality principle would "risk serious problems of overinclusion" and threaten a wide range of state health-and-safety and laws. *Epel*, 793 F.3d at 1175. Observing that extraterritoriality could justify invalidating even state laws that facilitate interstate commerce, Judge Sutton stated that he was "inclined to think" that the extraterritoriality doctrine "is a relic of the old world with no useful role to play in the new." *American Beverage Ass'n* v. *Snyder*, 735 F.3d 362, 378 (6th Cir. 2012) (Sutton, J., concurring). Academic com-

mentators have similarly rejected *Healy*'s extraterritoriality dicta as "clearly too broad," Goldsmith & Sykes, *The Internet and the Dormant Commerce Clause*, 110 Yale L.J. 785, 790 (2001), due to its "lack of a limiting principle," Denning, *Extraterritoriality and the Dormant Commerce Clause: A Doctrinal Post Mortem*, 73 La. L. Rev. 979, 998-999 (2013). The Court should heed this wisdom and reject Petitioners' attempt to expand the principle of extraterritoriality.

B. Proposition 12 Is Constitutional Under *Pike* Balancing

Petitioners' argument under *Pike* also fails. The *Pike* balancing test asks whether "the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits." *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137, 142 (1970). Judicial review under *Pike* is highly deferential, and the Court has rightly warned against using *Pike* balancing to judicially second-guess quintessentially legislative judgments. *See Davis*, 553 U.S. at 353 ("[T]he Judicial Branch is not institutionally suited to draw reliable conclusions of the kind that would be necessary for the Davises to satisfy a Pike burden in this particular case."); *United Haulers Ass'n* v. *Oneida–Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 347 (2007) (opinion of Roberts, C.J., joined by Souter, Ginsburg, and Breyer, JJ.) (rejecting "invitations to rigorously scrutinize economic legislation passed under the auspices of the police power" under the *Pike* balancing test); *id.* at 348 (Scalia, J., concurring in part) (stating that to "'broaden the negative Commerce Clause beyond its existing scope'" would "'intrude on a regulatory sphere traditionally occupied by the States'").

The few cases where the Court purported to employ *Pike* balancing to strike down state laws involved statutes that were discriminatory. The most recent decision of this Court to find a *Pike* violation, *Bendix Autolite Corp.* v. *Midwesco Enterprises, Inc.*, 486 U.S. 888 (1988), involved an Ohio tolling statute that, in the Court's own words, "might have been held to be a discrimination that invalidates without extended inquiry." *Id.* at 891; *see also id.* at 898 (Scalia, J., concurring in judgment) (noting that the law was "on its face discriminatory because it applies only to out-of-state corporations"). In fact, *Pike* itself involved a discriminatory law. *See C&A Carbone*, 511 U.S. at 391-392 (citing *Pike*, 397 U.S. at 142).

Here, Proposition 12 does not impose a substantial burden on interstate commerce, and even if it did, that burden would be outweighed by its significant benefits.

1. Proposition 12 imposes no substantial burden on interstate commerce

Petitioners allege that Proposition 12 "imposes substantial burdens on the national pork industry that are borne entirely by out-of-state farmers and their customers." Petitioners Br. 44. But this claim rests on the unsupported assumption that price increases for California consumers due to compliance with Proposition 12 for sales in California will be replicated nationwide, even in States that do not impose the same requirements on whole pork sold within their borders. That is incorrect.

As Professors Richard Sexton and Daniel Sumner's model of Proposition 12's impact demonstrates, "[p]ork consumers in California will pay higher prices" yet "the effect on pork consumers outside of California will be

marginal." Brief of Agricultural and Resource Economics Professors 6. This is consistent with an economic analysis of California's egg regulations that found:

> Economic principles indicate that the California regulations will result in market segmentation, with the long run average price of eggs increasing in California to cover the cost of production of [cage-free] eggs. In the long run, the prices of conventional eggs outside of California will be unaffected.

Wright, *The Economic Impacts of the California Cage-System Regulations: A Critical Analysis* 4 (Mar. 5, (2018), tinyurl.com/2ap2aw3e. The costs of Proposition 12 will thus be borne by California consumers.

As for producers, because Proposition 12 does not regulate the market for pork in other States, it leaves producers with a choice: they can (1) segregate their supply chain to comply with Proposition 12 only for pork sold in California; (2) ensure their entire supply chain complies with Proposition 12's standards; or (3) decline to make changes and continue supplying uncooked whole pork to other States. None of the three options imposes a substantial burden because producers are free to choose among them and will convert their operations only if the benefits outweigh the burdens.[4]

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[4] In any event, the dormant Commerce Clause "protects the interstate market, not particular interstate firms" or particular "methods of operation." *Exxon Corp.* v. *Governor of Md.*, 437 U.S. 117, 127 (1978). It was thus irrelevant in *Exxon* that "[s]ome refiners may choose to withdraw entirely from the Maryland market" in response to the challenged regulation. *Id.*

The egg-related provisions of Proposition 12 are not before this court, but the egg industry's experience suggests that the transition will be manageable for the pork industry. In 2008, California voters adopted Proposition 2, which provided that a person could not confine a covered animal (defined to include egg-laying hens) in a manner that prevented the animal from "[l]ying down, standing up, [] fully extending his or her limbs[, and] [t]urning around freely." *California Voter Information Guide* 82, (text of proposed law § 25990(a)), https://tinyurl.com/2p8czha2; *see also* Inst. of Gov'tl Studies, Univ. of Cal., Berkeley, *Proposition 2*, https://tinyurl.com/2p8ce82e (last accessed Aug. 12, 2022).[5] In 2010, the California Legislature enacted a law known as AB 1437 that prohibits the sale in California of shell eggs "if the seller knows or should have known that the egg is the product of an egg-laying hen that was confined on a farm or place"—in the state or outside the state—"that is not in compliance with animal care standards set forth in [the statute]." Cal. Health & Safety Code § 25996. The California Department of Food and Agriculture's "Shell Egg Food Safety" regulation, which is aimed at combating Salmonella, similarly prohibits egg handlers and producers from "sell[ing] or contract[ing] to sell a shelled egg for human consumption in California" if it comes from a hen kept in an enclosure that does not provide a set minimum amount of space per hen. Cal. Code Reg. § 1350(d).

In response to these laws and regulations, California egg producers have significantly increased production by building and converting housing to make room for more cage-free birds. *See, e.g.*, Alonzo, *U.S. Egg*

[5] Proposition 2 also applied to calves raised for veal and pregnant pigs.

Industry: Cage-Free Demands, Flock Size Increases, Watt Poultry (Feb. 8, 2017), https://tinyurl.com/y7844by2 (describing a group of producers' plans to add "cage-free housing for a collective 4.7 million hens"). The effect has been to accelerate producers' adoption of standards favored by consumers.

Cage-free egg policies have now been adopted by most major egg retailers nationwide, including Walmart, Kroger, Costco, Albertsons/Safeway, CVS, Walgreens, Target, Publix, Whole Foods, Dollar General, 7 Eleven, Dollar Tree, and Wegmans, to name but a few. *See Cage-Free*, Welfare Commitments, https://tinyurl.com/54h4v3j4 (last accessed Aug. 12, 2022). In all, "more than 2,000 companies have pledged to go cage-free" by 2025, including JAB Holding (Panera Bread, Krispy Kreme, Pret A Manger, Einstein Bros. Bagels, Caribou Coffee); Inspire Brands (Arby's, Baskin–Robbins, Buffalo Wild Wings, Dunkin'); Yum Brands (KFC, Pizza Hut, Taco Bell); and Focus Brands (Auntie Anne's, Carvel, Cinnabon). *See* Surowinski, *27 Cage-Free Victories Ahead of Animal Welfare Report*, The Humane League (Feb 9, 2022), https://tinyurl.com/34ke94rc; *see also* Egg Track, *The Cage-Free Progress Report*, https://www.eggtrack.com/en/ (last accessed Aug. 12, 2022).

These cage-free pledges by large egg customers led Cal-Maine, the largest U.S. egg producer, to announce a $310 million investment in cage-free farming. *See* Cal-Maine Foods, Inc., *Sustainability Report 2019*, at 18 (2020), https://tinyurl.com/2mh8x67u ("A significant number of our customers, including our largest customers, have committed to exclusive offerings of cage-free eggs by specified future dates."). This is exemplary of a larger transition. While only 6% of U.S. hens were cage-free in 2015, the number had grown to 29% by

2021. Torrella, *The biggest animal welfare success of the past 6 years, in one chart*, Vox (Mar. 23, 2021), https://tinyurl.com/x2tsz7ma. USDA now estimates that there are over 105 million cage-free hens in production nationwide, approximately one-third of the national total. *See* USDA-AMS, *Monthly USDA Cage-Free Shell Egg Report* 1 (Aug. 1, 2022), https://tinyurl.com/2p8cbzxz; USDA, *Chickens and Eggs* (July 1, 2022), https://tinyurl.com/4r2k7yw9. Over half of U.S. hen housing is expected to employ cage-free systems by 2025. *See* Starmer, *A Momentous Change is Underway in the Egg Case*, USDA (Feb. 21, 2017) https://tinyurl.com/mr2cvn3u.

Egg producers' ability to navigate this transition helps illustrate that the burdens of updating confinement standards are manageable, and that producers stand to benefit from incentives to align their practices with evolving consumer preferences.

2. The benefits of Proposition 12 are significant

Even if Proposition 12 imposed a significant burden, such a burden would not be "clearly excessive" in relation to Proposition 12's benefits. Intervenor Respondents have discussed the health and safety benefits of Proposition 12's pork regulations at length. ACEF will not repeat that analysis other than to note that it is consistent with the substantial health benefits of the egg-related provisions that are not before the Court in this suit.

As Petitioners themselves acknowledge, "egg-laying hens … produce eggs that carry a well-documented risk to human health" because their consumption can lead to "foodborne illness." Petitioners

Br. 13-14 n.5. Proposition 12's text explicitly states that the methods of confinement it prohibits "threaten the health and safety of California consumers, and increase the risk of foodborne illness." Proposition 12 § 2. The Official Voter's Information Guide for Proposition 12 also explained the increased risk from traditional cages for egg-laying hens:

> In the past decade, there have been recalls of nearly a billion eggs from caged chickens because they carried deadly Salmonella. Scientific studies repeatedly find that packing animals in tiny, filthy cages increases the risk of food poisoning. Even Poultry World, a leading egg industry publication admitted, "Salmonella thrives in caged housing."

California General Election: Official Voter Information Guide 70 (Nov. 6, 2018), https://tinyurl.com/mpfe3nke.

The California Legislature similarly concluded that traditional confinement of egg-laying hens raises health and safety concerns. In 2010, the Legislature made detailed findings about the public-health purpose of AB 1437, a law that imposed care standards on the handling of egg-laying hens. It concluded that "[e]gg-laying hens subjected to stress are more likely to have higher levels of pathogens in their intestines" and that such "conditions increase the likelihood that consumers will be exposed to higher levels of food-borne pathogens" such as Salmonella. Cal. Health & Safety Code § 25995(c). The Legislature thus declared its "intent": to "protect California consumers from the deleterious, health, safety, and welfare effects of the sale and consumption of eggs derived from egg-laying hens that are exposed to sig-

nificant stress and may result in increased exposure to disease pathogens including salmonella." *Id.* § 25995(e).

In reaching this conclusion, the Legislature relied on various scientific studies. *See* Cal. Assembly Bill 1437, § 1 (2010); Pew Commission on Industrial Farm Animal Production, *Putting Meat on the Table: Industrial Farm Animal Production in America* 13 (2008), https://tinyurl.com/mu6uvrvt (finding that "the scale and methods common to [Industrial Farm Animal Production ("IFAP")] can significantly affect pathogen contamination of consumer food products"); *see also id.* at 6 (IFAP includes "gestation and farrowing crates in swine production [and] battery cages for egg-laying hens"). The European Food Safety Authority surveyed the scientific literature in 2019 and likewise found that, although there were some conflicting studies, "[o]verall, the evidence points to a lower occurrence" of Salmonella in laying hens "in non-cage systems compared to cage systems." EFSA Panel on Biological Hazards, *Salmonella Control in Poultry Flocks and its Public Health Impact* 68 (2019), https://tinyurl.com/yedrvafj.

This link between production practices and the safety of California consumers illustrates the State's important interest in considering those production practices when regulating sales in California.

II. PETITIONERS' SUIT DOES NOT CHALLENGE PROPOSITION 12'S EGG-RELATED PROVISIONS

Although the relative benefits and burdens of California's egg regulations help illustrate the importance of preserving States' authority to regulate in-state sales of food products, the scope of the lawsuit before the Court is limited. Petitioners have not challenged Proposition 12's egg-related provisions. Indeed, they

would lack standing to do so. This Court should therefore ensure that, however it rules with respect to pork, it says nothing that would cast doubt on the constitutionality of Proposition 12's egg-related provisions.

Petitioners' complaint focused exclusively on the pork industry. Dkt. 1, *National Pork Producers Council* v. *Ross*, No. 3:19-cv-02324 (S.D. Cal. Dec. 5, 2019). They made no allegations challenging the egg-related provisions in Proposition 12. The district court thus focused on the pork industry, *National Pork Producers Council* v. *Ross*, 456 F. Supp. 3d 1201, 1209-1210 (S.D. Cal. 2020), and the Ninth Circuit did the same, *National Pork Producers Council* v. *Ross*, 6 F.4th 1021, 1028, 1033 (9th Cir. 2021). Nothing in the petition for a writ of certiorari or Petitioners' brief purports to challenge Proposition 12's egg-related provisions. The egg-related provisions, including California Health & Safety Code § 25990(b)(3)-(4), are thus not at issue in this suit.

Indeed, Petitioners would lack standing to challenge Proposition 12's egg-related provisions. Their complaint identifies no members of either organization in the egg industry, but rather focuses exclusively on the pork industry. "[S]tanding is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim they press and each form of relief they seek." *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2207 (2021). Petitioners thus have not carried their burden of proving that they face an "'actual or imminent'" prospect of suffering a "concrete and particularized" injury from Proposition 12's egg-related provisions, and this Court does not have jurisdiction to address those provisions. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

Accordingly, the Court should ensure that in discussing the pork provisions of Proposition 12, it does not inadvertently make statements that would implicate Proposition 12's egg-related provisions. This case is about specific provisions regarding pork, not the constitutionality of Proposition 12 as a whole.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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