

No. 21-468

IN THE
Supreme Court of the United States

NATIONAL PORK PRODUCERS COUNCIL &
AMERICAN FARM BUREAU FEDERATION,
Petitioners,

v.

KAREN ROSS, ET AL.,
Respondents.

ON WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF OF GLOBAL ANIMAL
PARTNERSHIP AND EARTHCLAIMS
AS *AMICI CURIAE* IN SUPPORT OF
RESPONDENTS**

WILLIAM J. FRIEDMAN
EARTHCLAIMS LLC
107 S. West Street
Alexandria, VA 22314
Tel: (202) 596-5592
wfriedman@earthclaims.com

ALETHEA ANNE SWIFT
Counsel of Record
JONATHAN S. MASSEY
MASSEY & GAIL LLP
1000 Maine Ave. SW
Suite 450
Washington, D.C. 20024
Tel: (202) 964-7678
aswift@masseygail.com
jmassey@masseygail.com
Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*¹

Global Animal Partnership (“G.A.P.”), a 501(c)(3) nonprofit organization, is one of the largest animal welfare food-labeling programs in North America. Established in 2008, G.A.P.’s goal is to improve farm animal welfare standards worldwide. The organization touches every step of the domestic pork supply chain: G.A.P. works with farms to implement standards, processors seek certification to package ingredients for purchase, brands use certified products and label them with G.A.P.’s seal, and retailers carry and market G.A.P. certified pork. G.A.P. labelling is subject to approval by the U.S. Department of Agriculture’s Food Safety and Inspection Service,² and G.A.P. certified operations are audited at least every 15 months.³

EarthClaims LLC (“EarthClaims”) designs and implements comprehensive supply chain oversight systems that verify compliance with animal welfare standards and regulatory requirements, including G.A.P. standards and Proposition 12. EarthClaims, which inspects and certifies farms in 47 states, has been the exclusive provider of G.A.P. certification

¹ All parties consented to the filing of this *amici curiae* brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person or organization other than G.A.P., EarthClaims, and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

² See U.S. Dep’t Agric., *FSIS Compliance Guideline for Label Approval* 16 (2020), <https://tinyurl.com/yj9da39m>.

³ *Every Farm, Every 15 Months: Three Reasons to Choose G.A.P.*, Global Animal Partnership (July 24, 2018), <https://tinyurl.com/2w7s4fzs>.

services to North American farms and ranches since 2019. It has certified hog farms, including “split operations” that produce both G.A.P. animals and noncompliant animals, since 2009.

G.A.P. and EarthClaims have a deep understanding of animal welfare standards and certification requirements, including those applicable to U.S. pork production. G.A.P. standards meet or exceed the requirements of Proposition 12, and EarthClaims would seek accreditation to conduct certification for the State of California. They submit this brief to provide the Court with background on the U.S. pork industry, particularly with respect to (1) the widespread use of animal welfare certification programs that require the same traceability and segregation protocols envisioned by Proposition 12, and (2) facts showing that such protocols are not novel or impracticable enough to cause the disruption Petitioners allege.

INTRODUCTION AND SUMMARY OF ARGUMENT

Breeding sows are often confined in gestation crates—enclosures so small that the pigs cannot turn around—for the entirety of their 112–114-day pregnancies.⁴ Petitioners challenge the provisions of Proposition 12 that prohibit the sale in California of meat from the offspring of sows confined to gestation crates.

⁴ Humane Soc’y of the United States, *An HSUS Report: Welfare Issues with Gestation Crates for Pregnant Sows* 1 (Feb. 2013), <https://tinyurl.com/mr29stsy>.

Petitioners' argument rests largely on their contention that the traceability and segregation protocols necessary to selectively comply with Proposition 12 are impracticable, which is why "[h]ardly any commercially bred sows are housed" with the space required by the law.⁵ According to Petitioners' brief, allowing Proposition 12 to take effect would therefore cause buyers throughout the country to demand that all of their producers comply with Proposition 12 for all of their pigs, thereby violating the dormant Commerce Clause's extraterritoriality principle.⁶

That is simply not true. *Amici* have certified thousands of farms under standards akin to Proposition 12. Tracing, segregation, and verification processes are already widely used throughout the domestic pork supply chain, including by *amici's* partners. Many large-scale producers already house sows in Proposition 12-compliant spaces, and several of the largest suppliers have made clear that adjusting certain facilities and procedures to accommodate the law will not cause the harm Petitioners assert. Against that background, any claim that Proposition 12 will substantially burden interstate commerce is implausible.

⁵ Pet. Br. 3, 16.

⁶ *Id.* at 3–4.

ARGUMENT

I. Large-scale producers, packers, and retailers already use traceability and segregation protocols to verify compliance with welfare standards like Proposition 12.

Petitioners contend that Proposition 12 will force pig farmers nationwide to convert all their facilities into ones compliant with California law. That contention rests on Petitioner’s claim that selective compliance is infeasible because traceability and segregation limitations make it impossible for farmers to know “where any particular pig’s meat will be sold.” That narrow framing is misleading, and Petitioners’ characterization of existing traceability and segregation procedures is inaccurate. Indeed, Petitioners’ own complaint alleges not that selective conversion is impracticable but only that it would be expensive.⁷

The U.S. pork supply chain involves three primary groups. First are producers, who manage the farms at which pigs progress throughout their lives. That cycle includes gestation, farrowing (birth to weaning), nursery (commencing post-weaning and lasting between six and eight weeks), and finishing (the stage of production at which pigs reach their final

⁷ See, e.g., Pet. App. 158a (¶ 57) (referencing “substantial compliance costs”), 170a (¶ 60) (alleging that sow farms would be forced to expend “substantial capital costs”).

weight).⁸ After finishing, pigs are transported to the second group in the supply chain: packers. Packers slaughter, process, and package pork for distribution to the third group, which comprises wholesale distributors, retailers, and other buyers.⁹ The relationships among producers, packers, and buyers vary based on the nature of each participant in a given supply chain. Some swine farms are “farrow-to-finish,” which means that they manage pigs throughout their growth and development, while others specialize in one or more phases of the pig life cycle.¹⁰ Some packers operate their own farms, while others contract with farmers who supply exclusively to that packer.¹¹

What does not vary is this: while producers and packers may not know the address of the grocery store at which a given pig’s meat will be sold, they almost always operate under welfare standards set in producer–packer or packer–distributor contracts. Because compliance is required from the outset of a given animal’s life, animals that meet those standards are handled separately from any that do not. And production and processing of those animals

⁸ *Life Cycle of a Market Pig*, Pork Checkoff, <https://tinyurl.com/2tfcpz8> (last visited August 13, 2022); Am. Meat Sci. Ass’n, *Pork Production: Farrow to Finish Process* (Mar. 9, 2017), <https://tinyurl.com/5x52cdn>.

⁹ See U.S. Dep’t Agric., *Packers*, <https://tinyurl.com/2dme8wc4> (last visited Aug. 13, 2022) (summarizing the roles and responsibilities of packers in the United States).

¹⁰ Farms.com, *Swine Farming*, <https://tinyurl.com/3zhynzzw> (last visited Aug. 13, 2022).

¹¹ See, e.g., Ronald L. Plain et al., *The Structure of the U.S. Pork Industry*, Pork Information Gateway (Apr. 4, 2012), <https://tinyurl.com/mr36d45y>.

is subject to robust traceability and segregation protocols that are already in widespread use.

G.A.P.'s Animal Welfare Certified program illustrates this commercial reality. EarthClaims presently certifies more than 800 G.A.P. compliant U.S. pig farms, and all fresh pork sold at Whole Foods Market—a multinational chain with more than 500 locations—is certified to meet G.A.P. standards.¹² Applegate Farms, another G.A.P. partner,¹³ is the leading natural and organic prepared-meats brand.¹⁴ Applegate's pork products, which already comply with Proposition 12,¹⁵ are sold nationwide at stores like Target, Walmart, and Harris Teeter. Niman Ranch offers another example. Niman does not certify via G.A.P. but also prohibits the use of gestation crates or stalls. It sources from more than 600 farms, which are audited annually.¹⁶ The company's pork is sold

¹² Whole Foods Market, *Meat Dep't Quality Standards*, <https://tinyurl.com/27j9bkr6> (last visited Aug. 13, 2022); Whole Foods Market, *Company Info* <https://tinyurl.com/yvj3kx6t> (last visited Aug. 13, 2022). Whole Foods has prohibited the use of both gestation and farrowing crates by all its pork suppliers for nearly 20 years. Frances Flower, *No Gestation Crates for Our Pigs*, Whole Foods Market (Mar. 22, 2012), <https://tinyurl.com/29ryjmta>.

¹³ *Pig Standards*, Global Animal Partnership, <https://tinyurl.com/2aarzmrt> (last visited Aug. 13, 2022).

¹⁴ *Applegate Farms, LLC*, Hormel <https://tinyurl.com/yc3j6jcz> (last visited Aug. 13, 2022).

¹⁵ *Hogs*, Hormel, <https://tinyurl.com/mr2rzjpx> (last visited Aug. 13, 2022).

¹⁶ *Niman Ranch Pork Protocols*, Niman Ranch (Aug. 2019), <https://tinyurl.com/muaw26fx>.

nationwide through retailers including AmazonFresh, Goldbelly, and Imperfect Foods.¹⁷

Pork products bearing G.A.P. designations must be from EarthClaims-certified farms and pass through the supply chain—including collection points, slaughter facilities, and any subsequent processors—subject to specific and verified chain-of-custody requirements.¹⁸ Certification thus requires following a particular set of pigs and the resulting pork through all steps in the supply chain—*i.e.*, traceability.¹⁹

But traceability and segregation requirements do not, as Petitioners suggest, require all participating suppliers to exclusively produce certified pigs or pork. The opposite is true: such protocols, which are already in widespread use, allow producers and packers to handle both certified and uncertified animals while maintaining the integrity of the G.A.P.-specific supply.

To accomplish that goal, robust traceability and segregation practices are built into each step of the supply chain. First, consider production. If G.A.P. pigs are not raised on a single operation for their entire lives, each farm on which they live must be

¹⁷ *Where to Buy*, Niman Ranch, <https://tinyurl.com/2p9axs4w> (last visited Aug. 13, 2022).

¹⁸ Global Animal Partnership, *5-Step Animal Welfare Standards for Pigs v2.5 1* (Aug. 1, 2022), <https://tinyurl.com/2p8ud5b7>.

¹⁹ *See Tracking and Tracing of Food*, FDA (Sept. 21, 2020), <https://tinyurl.com/4r68a5sj> (defining traceability as “the ability to follow the movement of a food product and its ingredients through all steps in the supply chain”).

separately inspected and certified.²⁰ And farmers that produce G.A.P. certified pigs and uncertified pigs must meet G.A.P.’s stringent tracking and segregation standards.²¹

Segregation is also essential as animals move from production to the second stage, packing. That transition may involve “collection points” at which multiple producers deliver pigs for shipment to slaughter facilities.²² Because collection points are often used to “batch” pigs from different farms together for shipment,²³ segregation is critical. Collection points are audited and certified by EarthClaims before G.A.P. animals may be delivered to their facilities, and each collection site operator must ensure that the G.A.P.-prescribed chain of custody is not broken.²⁴

Finally, once G.A.P. certified pigs reach the packing stage, they must be processed at facilities with segregation protocols that ensure compliant animals and their resulting product remain separate from their noncertified counterparts.²⁵

²⁰ Global Animal Partnership, *5-Step Animal Welfare Standards for Pigs v2.5 6* (Aug. 1, 2022), <https://tinyurl.com/2p8ud5b7>.

²¹ *Id.* at 9. These “split operations” must, for example, operate subject to a segregation protocol that provides for either (1) physical separation, or (2) the use of methods that facilitate instant visual identification.

²² Global Animal Partnership, *Animal Welfare Pilot Standards for Pig Collection Points v1.22*, Global Animal Partnership (Aug. 1, 2022), <https://tinyurl.com/aa5xcdas>.

²³ *Id.*

²⁴ *Id.*

²⁵ Global Animal Partnership, *Pilot G.A.P. Policy Manual* 46–47 (Apr. 28, 2020), <https://tinyurl.com/bdda7nuf>.

Traceability and segregation protocols thus allow for G.A.P. certified pork to be (1) produced at split operation farms, (2) shipped to slaughter facilities via standard collection points, and (3) processed by packers who handle both certified and uncertified animals. A farmer may be unable to trace from an individual pig to a specific pork cut,²⁶ but the feasibility of that type of tracing is irrelevant. If a group of pigs is born to sows housed in compliant spaces and those pigs are segregated from noncompliant animals during nursery, finishing, transport, and processing, then the compliance status of the final product can be reliably assessed.

II. Companies that choose to sell pork products in California will not suffer material harm.

Petitioners' brief protests that the traceability and segregation protocols necessary to comply with Proposition 12 are novel and unworkable.²⁷ Some changes will indeed be necessary. But Petitioners' own constituents dispute the parade of horrors presented to the Court.

Examples abound. Tyson Foods, one of the country's largest pork producers,²⁸ stated last year that Proposition 12 will affect only "4% of total production."²⁹ Tyson President and CEO Donnie King

²⁶ *See* Pet. Br. 16 n.7.

²⁷ *See id.* at 16–17.

²⁸ Tyson produces approximately 20 percent of the beef, pork, and chicken in the United States. *Tyson Food Facts*, Tyson, <https://tinyurl.com/2mm9p3w5> (last visited Aug. 13, 2022).

²⁹ Tyson Foods, *Third Quarter 2021 Earnings* 15 (Aug. 9, 2021), <https://tinyurl.com/4v6pa54s>.

likewise described Proposition 12 as “not significant” because the company can “do multiple programs simultaneously,” “align suppliers,” and “certainly provide the raw material to service [its] customers in that way.”³⁰ Sizable pork producer Smithfield Foods describes itself as a “leader in group housing gestation” and committed to complying with Proposition 12.³¹ And Seaboard Foods, the country’s second-largest pork producer, announced in February 2022 that it was converting some farms to comply with Proposition 12 and would have compliant pork for sale in California by the end of the year.³²

Seaboard’s operations make it clear that major pork producers have been embracing segregated systems for several years. Seaboard already uses both open-group pens and gestation stalls, and its segregation practices allow the company to provide certain customers with pork raised from sows in specific gestation environments. In Iowa, for example, Seaboard and Triumph Foods jointly manage a pork processing facility that can process more than 21,000

³⁰ *Id.* Tyson is familiar with such practices in part because it supplies G.A.P. certified beef. *See, e.g., Beef Standards*, Global Animal Partnership, <https://tinyurl.com/5n89a9bm> (last visited Aug. 14, 2022).

³¹ Smithfield Foods, Inc., *2021 Sustainability Impact Report 22* (2021), <https://tinyurl.com/bde4ak7f>.

³² Tom Polansek, *U.S. Pork Producer to Resume Shipments to California After Farm Animal Law Delayed*, Reuters (Feb. 8, 2022), <https://tinyurl.com/55fxbd7c> (explaining that Seaboard initially withdrew from California but changed plans after entry of an injunction providing that companies will be given 180 days to implement changes after the regulations become final).

hogs per day.³³ The plant was designed with an “attribute-driven carcass sortation system designed to enable product segregation for unique customer demands and expectations.”³⁴ In 2022, that technology can hardly be described as out-of-reach: the plant opened half a decade ago in July 2017.³⁵

Indeed, segregation requirements are not foreign to U.S. pork producers—even those that do not produce welfare-certified animals. For example, organic meat must be produced subject to a “detailed, verifiable audit trail so that each animal . . . can be traced” to its originating farm. 7 U.S.C. § 6509(f)(1). Organic meat likewise cannot “come into contact” with its noncompliant counterpart. *Id.* § 6510(b). And the USDA requires that production of pork bound for the European Union must feature procedures for “maintaining [the] identity of and segregating hogs.”³⁶

Pork producers and packers have been developing segregation and traceability initiatives for several years, pursuing a system involving “scanning a pork chop label in a grocery store and then seeing the farm where the pig was raised in a humane

³³ Krissa Welshans, *Seaboard Triumph Foods Pork Plant Operating After Two-year Project*, Feedstuffs (Sept. 12, 2017), <https://tinyurl.com/43e7rw76>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ U.S. Dep’t Agric., *FSIS Guideline—Program for Certifying Pork Intended for Export to the European Union (PFEU Program)* (2021), <https://tinyurl.com/33d2c3hm>.

manner.”³⁷ In the face of that history, Petitioners’ characterization of Proposition 12’s impact conflicts with a proper understanding of the supply chain and the current practices of the pork industry.

CONCLUSION

For these reasons, this Court should affirm the judgment of the court of appeals.

Respectfully submitted,

WILLIAM J. FRIEDMAN
EARTHCLAIMS LLC
107 S. West Street
Alexandria, VA 22314
Tel: (202) 596-5592
wfriedman@earthclaims.com

ALETHEA ANNE SWIFT
Counsel of Record
JONATHAN S. MASSEY
MASSEY & GAIL LLP
1000 Maine Ave. SW
Suite 450
Washington, D.C. 20024
Tel: (202) 964-7678
aswift@masseygail.com
jmassey@masseygail.com
Counsel for Amici Curiae

Dated: August 15, 2022

³⁷ Jodi Schwan, *Pork Producer-Owned Company Plans to Build \$500M Sioux Falls Facility*, SiouxFalls.Business (June 14, 2021), <https://tinyurl.com/5n7xepz3>.