

No. 20-1215

**In the Supreme Court of the
United States**

NORTH AMERICAN MEAT INSTITUTE,

Petitioner,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA, ET
AL.,

Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF HEALTH CARE WITHOUT HARM,
THE NATIONAL COUNCIL FOR
OCCUPATIONAL SAFETY AND HEALTH, THE
CONSUMER FEDERATION OF AMERICA, AND
FOOD & WATER WATCH AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

HENRY S. WEISBURG

Counsel of Record

MATTHEW G. BERKOWITZ

CINDY GARO

J. IGNACIO SALDANA

MATTHEW A. WESTON

SHEARMAN & STERLING LLP

599 LEXINGTON AVENUE

New York, New York 10022

(212) 848-4000

hweisburg@shearman.com

Counsel for Amici Curiae

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Health Care Without Harm (“HCWH”), The National Council for Occupational Safety and Health (“National COSH”), the Consumer Federation of America (“the CFA”), and Food & Water Watch (“FWW”) respectfully submit this brief in opposition to the petition for a writ of certiorari filed by the North American Meat Institute (“NAMI”).¹

INTEREST OF AMICI CURIAE

I. HEALTH CARE WITHOUT HARM

HCWH is an international nongovernmental organization (“NGO”) that works to transform health care worldwide so that it reduces its environmental footprint, becomes a community anchor for sustainability, and a leader in the global movement for environmental health and justice. With the leadership and expertise of HCWH’s Healthy Food In Health Care Program, dedicated staff at more than 1,500 health care facilities across North America are implementing policies and programs that support sustainable food systems. Using an environmental nutrition framework, they leverage their respected voices, purchasing power, investments and other assets to develop food systems that conserve and renew natural resources, advance social justice and animal welfare, build community wealth, and fulfill

¹ Pursuant to Rule 37.6 of the Rules of this Court, the undersigned hereby states that no counsel for a party authored any part of this brief, in whole or in part, and no person other than *amici curiae* or its counsel made any monetary contribution to the preparation or submission of this brief. Counsel of record for the parties received notice of *amici curiae*’s intent to file this brief on May 21, 2021, ten days prior to its due date, and all parties consented to the filing of this brief.

the food and nutrition needs of all eaters now and into the future.

HCWH brings a unique perspective to this case because of its prior experience with and knowledge of the impact of antibiotic overuse in animal agriculture on the health care sector—and on public health in general.

II. NATIONAL COUNCIL FOR OCCUPATIONAL SAFETY AND HEALTH

National COSH is a 501(c)(3) organization dedicated to promoting safe and healthy working conditions for all working people through organizing and advocacy. It seeks to encourage workers to take action to protect their safety and health, promote protection from retaliation under job safety laws, and provide quality information and training about hazards on the job and workers' rights.

National COSH brings a unique perspective to this case because of its prior experience with large-scale factory farming and the impacts of the same on various health and safety considerations.

III. CONSUMER FEDERATION OF AMERICA

The CFA is an association of non-profit consumer organizations that was established in 1968 to advance the consumer interest through research, advocacy, and education. As a research organization, CFA investigates consumer issues, behavior, and attitudes through surveys, focus groups, investigative reports, economic analysis, and policy analysis. The findings of such research are published in reports that assist consumer advocates and policymakers as well as individual consumers.

They provide an important basis for the policy positions and work of the organization. As an advocacy organization, CFA works to advance pro-consumer policies on a variety of issues before Congress, the White House, federal and state regulatory agencies, state legislatures, and the courts. The CFA communicates and works with public officials to promote beneficial policies, oppose harmful ones, and ensure a balance debate on issues important to consumers.

Through its Food Policy Institute, the CFA conducts research and advocacy to promote a safer, healthier, and more affordable food supply. The CFA also coordinates the Safe Food Coalition, which is dedicated to reducing the burden of foodborne illness in the United States by improving government food inspection programs. The CFA has previously advocated against the “Protect Interstate Commerce Act”—also known as the “King Amendment”—which would have required states to authorize the sale of “any agricultural product” not prohibited under federal law, and would have wiped out dozens of states laws aimed at protecting food safety, animal welfare, and the environment, among other state interests.

The CFA thus brings a unique perspective to this case because of its long-standing support for state laws aimed at protecting the very same state interests at stake in the present appeal.

IV. FOOD & WATER WATCH

FWW is a 501(c)(3) non-profit organization working to create a healthy future for all people and generations to come—a world where everyone has

food they can trust, clean drinking water and a livable climate. FWW mobilizes regular people to build political power to move bold and uncompromised solutions to the most pressing food, water, and climate problems of our time. FWW works to protect people's health, communities, and democracy from the growing destructive power of the most powerful economic interests. As part of its mission, FWW works with and advocates for small family farms and ranches against corporate control and abuse of food and water resources, including campaigning for a ban of factory farms. The practices of factory farms place our public health and food supply at risk, pollute the environment and our drinking water, and wreck rural communities—while increasing corporate control over our food.

FWW brings a unique perspective to this case because of its prior experience with and knowledge of safe and sustainable farming practices and the long-term harms of factory farming.

INTRODUCTION AND SUMMARY OF ARGUMENT

In the midst of one of the deadliest pandemics in human history, Petitioner asks this Court to ignore the effect of Proposition 12 on the health risks posed by industrial pork production to nearly forty million California residents. The courts below have yet to consider those health risks in any depth, making this petition, which comes to the Court at the preliminary injunction stage, an inadequate vehicle for review of any constitutionality questions that Petitioner raises. Petitioner also ignores the legitimate animal cruelty concerns addressed by

Proposition 12, which must also be considered before a preliminary injunction can be granted.

The public interest considerations include the following:

- Industrial pork production, a documented source of infectious disease, poses a profound danger to public health.² Animal husbandry practices required to confine pigs in modern high-density facilities have dire consequences for not only the health and welfare of the animals, but also for worker safety, food safety, and public health. The air- and water-borne bacteria, viruses, and fungi at these facilities further spread disease among the closely-confined pigs—and humans are not far behind because many of these diseases can also infect humans, either through contact with the pigs and their waste or through contact with infected meat or other infected humans. To suppress and prevent the spread of bacteria-borne diseases among the densely-packed pigs, producers feed them non-therapeutic, low levels of antibiotics, which widespread use has contributed significantly to the growing number of antibiotic-resistant bacteria. Antibiotic-resistant infections in humans cost the United States health care sector \$21 billion to \$34 billion and cause the deaths of 23,000 Americans each year—the most common source of antibiotic resistant infections is contaminated food. The residents

² See *infra* pp. 11–17.

of California would continue to be exposed to these profound health risks.

- Proposition 12 addresses legitimate animal cruelty concerns.³ Every day, pigs, calves, and hens are subjected to outrageous conditions that still exist at animal facilities that provide California consumers with products from abused, stressed, and immunosuppressed animals. For example, pigs are fattened to over seven times their starting weight while the size of their *pens* does not change, live covered in feces, and when bred, are confined in such extreme conditions that they gnaw and bite the bars of their tiny crates until the bars are covered in blood. Further, calves destined for veal live in a cage that is barely larger than the calf's body and too small for the calf to turn around. Often, the calves are tethered to prevent movement and keep the flesh tender. These incredibly unhealthy living conditions can cause disease, including chronic pneumonia and diarrhea. The situation for hens is similarly egregious—industrial producers usually give hens less space than the area of a letter-sized sheet of paper in which to eat, sleep, lay eggs, and defecate. Animals would continue to be subjected to these outrageous conditions, and the residents of California would in turn continue consuming these products.

³ See *infra* pp. 17–23.

As illustrated by the *amici*, there exist, without doubt, additional public interest considerations that under this Court's well-established jurisprudence must at least be considered before the constitutionality of Proposition 12 can be resolved. The record's gap—or substantial factual disputes at the very least—on public interest issues renders this case and its procedural posture a poor vehicle for this Court's review of any constitutional questions about Proposition 12.

For the reasons set forth in this brief, the *amici* support Respondents and respectfully submit that the petition for a writ of certiorari be denied.

ARGUMENT

I. THIS CASE REPRESENTS A POOR VEHICLE FOR REVIEW BECAUSE CRITICAL PUBLIC INTEREST ISSUES HAVE YET TO BE CONSIDERED

Challenges to government action necessarily implicate public interest concerns by virtue of the number of individuals affected. M D. Moore, *The Preliminary Injunction Standard: Understanding the Public Interest Factor*, 117 Mich. L. Rev. 939, 954–59 (2019). Such concerns are further heightened in the context of a preliminary injunction, which must be in the public interest for it to be appropriately granted by the courts. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Petitioner asks this Court to review the Ninth Circuit's decision affirming the denial of its preliminary injunction under the false premise that, other than an interest in the protection of constitutional rights and prevention of an alleged

irreparable harm to its members, no further public interest considerations exist—this is wrong.

Even if a plaintiff seeking injunctive relief has established the likelihood of success on the merits or irreparable injury, or both, a preliminary injunction would be improper if the public interest outweighs such injury. *Winter*, 555 U.S. at 374. Moreover, “where an injunction is asked which will adversely affect a public interest for whose impairment, even temporarily, an injunction bond cannot compensate, the court may in the public interest withhold relief until a final determination of the rights of the parties, though the postponement may be burdensome to the plaintiff.” *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 313 (1982) (citation omitted).

Neither the district court nor the Ninth Circuit considered whether Petitioner’s preliminary injunction is in the public interest. In light of its conclusion that there are no serious questions regarding the merits of Petitioner’s constitutional challenge, the district court declined to address Petitioner’s arguments on the remaining preliminary injunction factors, including the public interest impact of the injunctive relief sought by Petitioner. Pet. App. B. The Ninth Circuit in turn affirmed the district court’s approach and abstained from examining the public interest factor. Pet. App. A.

In an attempt to foreclose a proper public interest assessment, Petitioner merely argued below that the public interest factor “require[s] compliance with the Constitution.” Brief for Appellant at 51–52, *N. Am. Meat Inst. v. Becerra*, 825 F. App’x 518, (9th Cir. 2020) (No. 19-56408). Petitioner’s argument,

however, is based on the false premise that there are no other public interest considerations involved in addition to the protection of constitutional rights and prevention of an injury to its members. Nonetheless, as illustrated in Part II below, there *exist* competing—and stronger—public interests impacted by the preliminary injunction sought by Petitioner, and these should be given *some* weight, at the very least. *Weinberger*, 456 U.S. at 313 (“[courts are] not mechanically obligated to grant an injunction for every violation of law . . . [and evaluating] commonplace considerations [beyond the merits] is ‘a practice with a background of several hundred years of history’” (internal citations omitted)); *Def. Distributed v. United States Dep’t of State*, 838 F.3d 451, 459 (5th Cir. 2016) (“The district court’s decision was based not on discounting Plaintiffs–Appellants’ interest [in protecting their constitutional rights] but rather on finding that the public interest in national defense and national security is stronger here, and the harm to the government is greater than the harm to Plaintiffs–Appellants. We cannot say the district court abused its discretion on these facts.”).

Given that the public interest considerations, including those outlined in this brief, were not considered by the lower courts, this case is in a poor procedural posture for the Court to consider Petitioner’s requested review.

II. A Preliminary Injunction Would be Improper in View of the Strong Public Interest Considerations

The purpose of Proposition 12 is 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 foodborne illness and associated negative fiscal impacts on the State of California.” Prevention of Cruelty to Farm Animals Act, Prop. 12 § 2. As illustrated in Sections A–B below, these are well-documented issues, which required action from the State of California.

The existence of strong public interest considerations arising from Petitioner’s preliminary injunction targeting Proposition 12 is further evidenced by various state regulatory regimes that could potentially be threatened by a ruling that is adverse to Proposition 12, including measures to prevent zoonotic disease,⁴ food safety regulations,⁵

⁴ Forty-seven states have taken steps to protect their flocks from avian influenza by establishing reporting requirements, disease control measures, quarantines, and veterinary permitting systems. Harvard Animal L. & Pol’y Program, *Legislative Analysis of H.R. 4879: the “Protect Interstate Commerce Act of 2018”* 38 (2018) (“King Amendment Legislative Analysis”), <https://animal.law.harvard.edu/wp-content/uploads/Harvard-ALPP-PICA-Report-1.pdf>; Maryn McKenna, *Bird Flu Could Cost the US \$3.3 Billion and Worse Could Be Coming*, Nat’l Geographic (July 15, 2015), <http://phenomena.nationalgeographic.com/2015/07/15/bird-flu-2/>; see also Humane Soc. Int’l, *An HSI report: The connection between animal agriculture, viral zoonoses, and global pandemics* 6–8 (Sept. 2020) (“HSI Report”), <https://blog.humane-society.org/wp-content/uploads/2020/10/Animal-agriculture-viral-disease-and-pandemics-FINAL-4.pdf>. These states have identified a public interest in regulating animal production and consumption in a way that protects their people and livestock from the growing risk of zoonotic disease and resulting epidemics (or worse).

food labeling and packaging laws,⁶ requirements for the shipping of agricultural products,⁷ and protections against agricultural pests.⁸

A. Industrial Pork Production, a Documented Source of Infectious Disease, Poses a Profound Danger to Public Health

In recent decades, animal agriculture has shifted away from systems of traditional family farms to systems of industrial farm animal production dominated by a few producers whose streamlined, automated, and standardized animal husbandry practices have reduced the number of workers needed to produce even more animals for

⁵ King Amendment Legislative Analysis, *supra* note 4, at 31 (citing Ala. Code § 20-1-27; Cal. Health & Safety Code § 114094.5; Ga. Comp. R. & Regs. 40-7-1-.13(3)(e); Ohio Rev. Code Ann. § 3715.521; N.J. Stat. Ann. § 56:8-2.27).

⁶ *Id.* at 28 (citing Harvard Food L. & Pol’y Clinic & Nat’l Resources Def. Council, *The Dating Game: How Confusing Food Date Labels Lead to Food Waste in America*, (Sept. 2013), available at <https://www.chlpi.org/wpcontent/uploads/2013/12/dating-game-report.pdf>).

⁷ *Id.* at 39–40 (citing Mich. Admin. Code r. 287.653).

⁸ *Id.* at 186–87.

meat production.⁹ In the pork industry—as with the poultry, egg, and other meat-producing industries—these changes have led to the confinement of increasingly large numbers of pigs in relatively small, enclosed facilities that restrict their movement.¹⁰ In concentrated animal feeding operations (“CAFOs”), the most extreme type of such facilities, thousands of animals are confined to a single facility.¹¹

The animal husbandry practices required to confine pigs in modern high-density facilities have dire consequences for not only the health and welfare

⁹ See Pew Comm’n Indus. Farm Animal Prod., *Putting Meat on the Table: Industrial Farm Animal Production in America* 1–3 (Apr. 29, 2008) (“2008 Pew Study”), https://www.pewtrusts.org/-/media/legacy/uploadedfiles/phg/content_level_pages/reports/pci_fapfinalpdf.pdf; *Precautionary Moratorium on New and Expanding Concentrated Animal Feeding Operations*, Am. Pub. Health Ass’n (Nov. 5, 2019), <https://www.apha.org/policies-and-advocacy/public-health-policy-statements/policy-database/2020/01/13/precautionary-moratorium-on-new-and-expanding-concentrated-animal-feeding-operations>.

¹⁰ 2008 Pew Study, *supra* note 9, at 38 (recommending phasing out all intensive confinement systems, such as swine gestation crates and restrictive swine farrowing crates, and noting the capital investment in such systems in swine production); Dana Cole, Lori Todd, & Steve Wing, *Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects*, 108 *Envtl. Health Perspectives* 685 (2000) (“Cole”), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1638284/pdf/envhper00309-0041.pdf>.

¹¹ See 2008 Pew Study, *supra* note 9, at 33–34; *Animal Feeding Operations*, U.S. Dep’t Agric., https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plants_animals/livestock/afo/ (last visited May 27, 2021).

of the animals,¹² but also for worker safety, food safety, and public health. *See McKiver v. Murphy-Brown, LLC*, 980 F.3d 937, 979–84 (4th Cir. 2020) (Wilkinson, J., concurring). Such facilities generate substantial amounts of manure, urine, and other waste materials that generate air and water pollutants, including infectious (and antibiotic-resistant) bacteria, viruses, and fungi, that contaminate the local air and ground water supplies.¹³ Air- and water-borne chemical pollutants from these facilities not only cause illness in the pigs, but can also directly cause chronic respiratory illnesses, among other illnesses, in workers and surrounding communities. *See McKiver*, 980 F.3d at 979–80 (Wilkinson, J., concurring).¹⁴

The air- and water-borne bacteria, viruses, and fungi further spread disease among the closely-confined pigs—and humans are not far behind because many of the diseases carried by the bacteria, viruses, and fungi can also infect humans, either through contact with the pigs and their waste or through contact with infected meat or other infected humans. *Id.*¹⁵ In particular, because pigs can be

¹² *See infra*, pp. 17–23.

¹³ *See Cole, supra* note 10, at 685–88; Food & Water Watch, *Factory Farm Nation: 2020 Edition* at 2–4 (April 2020) (“Factory Farm Nation”), https://www.foodandwaterwatch.org/wp-content/uploads/2021/03/ib_2004_updfacfarmmaps-web2.pdf; *How Our Food System Affects Public Health*, Food Print, <https://foodprint.org/issues/how-our-food-system-affects-public-health/> (last visited May 27, 2021) (“Food & Pub. Health”).

¹⁴ *See also Cole, supra* note 10, at 685–94; Food & Pub. Health, *supra* note 13.

¹⁵ *See Cole, supra* note 10, at 685–94.

infected not only with swine influenza, but also human and avian influenza, they are “ideal mixing vessels for influenza viruses.”¹⁶ Most famously, the 2009 H1N1 influenza virus (or “swine flu”), which originated from pigs imported from the United States, carried gene segments that originated from humans, birds, North American pigs, and Eurasian pigs.¹⁷ The 2009 H1N1 outbreak, which was declared a pandemic two months after the identification of H1N1 in June 2009, resulted in millions of infections and 150,000 to 575,000 deaths worldwide in the first year of the outbreak.¹⁸ Pigs carry several other types of infectious bacteria and viruses, such as salmonella, *E. coli*, and Hepatitis E.¹⁹

However, the possibility of a pandemic caused by pig-borne diseases spread through close confinement in industrial production facilities is not the pork industry’s only threat to public health. The way the pork industry chooses to control such spread of disease among its animals also creates public health risks. To suppress and prevent the spread of

¹⁶ HSI Report, *supra* note 4, at 6, 9–11 (quoting Cassandra Willyard, Flu on the farm, *Nature* (Sept. 18, 2019) <https://www.nature.com/articles/d41586-019-02757-4>); see also Sigal Samuel, *The meat we eat is a pandemic risk, too*, *Vox* (Aug. 20, 2020, 11:50 AM ET) (“Pandemic Risk”), <https://www.vox.com/future-perfect/2020/4/22/21228158/coronavirus-pandemic-risk-factory-farming-meat>.

¹⁷ HSI Report, *supra* note 4, at 9–11; *H1N1 Flu*, Ctrs. For Disease Control & Prevention (Nov. 25, 2009), https://www.cdc.gov/h1n1flu/information_h1n1_virus_qa.htm.

¹⁸ HSI Report, *supra* note 4, at 9–11.

¹⁹ Cole, *supra* note 10, at 691–92.

bacteria-borne diseases among the densely-packed pigs, producers feed them non-therapeutic, low levels of antibiotics—a practice that has the added benefit (to producers) of promoting the fast growth of the animals.²⁰ See *McKiver*, 980 F.3d at 980 (Wilkinson, J., concurring) (citation omitted) (“CAFOs commonly administer antibiotics at subtherapeutic concentrations both ‘as prophylactic drugs and to increase feed efficiency and daily weight gain.’”). Such use of antibiotics is so widespread that sales of antibiotics for use in animal agriculture in the United States is several times that of the human health care sector.²¹

Widespread use of antibiotics in animal agriculture has contributed significantly to the

²⁰ See also Maryn McKenna, *Farm Animals Are the Next Big Antibiotic Resistance Threat*, *Wired* (Sept. 19, 2019, 02:09 PM) (“Resistance Threat”), <https://www.wired.com/story/farm-animals-are-the-next-big-antibiotic-resistance-threat/>; Food & Water Watch, *Antibiotic Resistance 101: How Antibiotic Misuse on Factory Farms Can Make You Sick* at 4–5 (Sept. 2012) (“AR 101”), <https://www.yumpu.com/en/document/read/24346542/antibiotic-resistance-101-food-water-watch>.

²¹ See, e.g., *Record-High Antibiotic Sales for Meat and Poultry Production*, Pew Charitable Trs. (Feb. 6, 2013), <https://www.pewtrusts.org/en/research-and-analysis/articles/2013/02/06/recordhigh-antibiotic-sales-for-meat-and-poultry-production#sthash.fTWHXIJP.dpuf> (reporting that 29.9 million pounds of antibiotics were sold for meat and poultry production, compared to 7.7 million pounds sold to treat humans); AR 101, *supra* note 20, at 5 (“The FDA also reports that 74 percent of antibiotics used in livestock are sold for use in feed, 16 percent for use in water and only 3 percent for use as injection.”); *Resistance Threat*, *supra* note 20 (reporting that possibly three-fourths of all antibiotics in the world are used in this way).

growing number of antibiotic-resistant bacteria. Antibiotic resistance is a type of antimicrobial resistance in which bacteria evolve and become resistant to the antibiotics used to treat them by random genetic mutations or by one species acquiring resistance from another.²² Extended exposure of bacteria to antibiotics facilitates the selection of the mutations in bacteria that cause antibiotic resistance in bacteria, as non-resistant bacteria are killed off.²³ This phenomenon, when coupled with the unsanitary conditions common to densely-packed industrial production facilities, creates a perfect incubator for the spontaneous mutations that can result in antibiotic-resistant bacteria.²⁴ Indeed, several strains of antibiotic-resistant bacteria have been traced to pigs, such as *Enterococcus faecalis*, *E. coli*, and *Salmonella*

²² *About Antibiotic Resistance*, Ctrs. For Disease Control & Prevention, <https://www.cdc.gov/drugresistance/about.html> (last visited May 27, 2021); *Antimicrobial Resistance*, World Health Org. (Oct. 13, 2020), <https://www.who.int/news-room/fact-sheets/detail/antimicrobial-resistance>.

²³ See Leslie Pray, *Antibiotic Resistance, Mutation Rates, and MRSA*, 1 *Nature* Ed. 30 (2008), <https://www.nature.com/scitable/topicpage/antibiotic-resistance-mutation-rates-and-mrsa-28360/>.

²⁴ Pandemic Risk, *supra* note 16; AR 101 *supra* note 20, at 4–6; see also Cole, *supra* note 10, at 692–93; Health Care Without Harm, *Expanding Antibiotic Stewardship: The Role of Health Care in Eliminating Antibiotic Overuse in Animal Agriculture* (May 2014) (“Antibiotic Stewardship”), <https://noharm-uscanada.org/sites/default/files/documents-files/2735/Expanding%20Antibiotic%20Stewardship.pdf>

typhimurium DT104, the last of which is resistant to multiple antibiotics.²⁵

The most common source of antibiotic resistant infections is contaminated food.²⁶ Antibiotic-resistant infections in humans are more difficult—and therefore more expensive—to treat, costing the United States health care sector \$21 billion to \$34 billion and causing the deaths of 23,000 Americans each year.²⁷ Recognizing the public health risks of widespread antibiotic use, European pork producers have long banned the non-therapeutic use of antibiotics, resulting in significant reductions of antibiotic-resistant bacteria in animals and food.²⁸

B. The Lower Courts Did Not Consider Animal Cruelty Issues

Animal cruelty exists across the country—particularly for the animals that Proposition 12 endeavors to protect: breeding pigs, calves, and hens. The unfortunate truth is that the animals America loves to eat are often the animals that American farmers treat the worst.

²⁵ Antibiotic Stewardship, *supra* note 24; AR 101 *supra* note 20, at 7–9; Cole, *supra* note 10, at 692–93.

²⁶ Antibiotic Stewardship, *supra* note 24; AR 101, *supra* note 20, at 7–9.

²⁷ Antibiotic Stewardship, *supra* note 24; AR 101, *supra* note 20, at 2, 9.

²⁸ AR 101, *supra* note 20, at 12–13; Katie Couric, *Denmark's Case for Antibiotic-Free Animals*, CBS (Feb. 10, 2010, 4:20 PM), <https://www.cbsnews.com/news/denmarks-case-for-antibiotic-free-animals/>.

As to pigs, the largest pork producer in the world—Smithfield Hog Production Division (“Smithfield”), through its subsidiary Murphy-Brown, LLC (“Murphy-Brown”)—was recently exposed (again) for the horrific treatment of pigs raised at its facilities or at facilities under its direction and control:²⁹

- At Kinlaw Farms—a Smithfield finishing facility—“hogs arrive[] at around forty pounds, to be fattened to over seven times their starting weight.” *McKiver*, 980 F.3d at 979 (Wilkinson, J., concurring).
- Despite this massive *weight* increase, the size of their *pens* does not change. *Id.*
- At Kinlaw Farms, 14,000 hogs were “crammed into [] twelve confinement sheds.” *Id.*
- These pigs generate millions of gallons of waste and, due to the extreme confinement and inadequate waste management systems, often live covered in feces. *Id.*

²⁹ See generally Brief of the Humane Society of the United States as *Amicus Curiae* in support of Plaintiffs-Appellees and Affirmance, *McKiver v. Murphy-Brown, LLC*, 980 F.3d 937 (4th Cir. 2020) (No. 19-1019), (“HSUS Amicus Brief”); see also Dylan Matthews, *America’s largest pork producer pledged to make its meat more humane. An investigation says it didn’t.*, Vox (May 8, 2018, 12:30PM ET), <https://tinyurl.com/y5j2hmd3>.

- Ten percent of pigs die most likely due to complications from that confinement. *Id.* at 980 (citing HSUS Amicus Brief at 11).
- Pig transportation is done in extremely confining circumstances and results in roughly 1% of all transported pigs arriving at a slaughter plant either dead or non-ambulatory due to injury, fatigue, or illness.³⁰

Below is a real-life picture of pigs kept at Kinlaw farms:³¹



Contrast the above picture with the picture Smithfield provides on its website and sustainability reports:³²

³⁰ HSUS Amicus Brief, *supra* note 29, at 16 (citing to Ritter MJ et al., *Effect of floor space during transport of market-weight pigs on the incidence of transport losses at the packing plant and the relationships between transport conditions and losses*, 84 *J. Animal Sci.* 2856 (2006), <https://www.ncbi.nlm.nih.gov/pubmed/16971589>).

³¹ *Id.* at 9–10.



As to Smithfield *breeding pigs*:

- They are confined in tiny crates where they are unable to even turn around for approximately six weeks after they are inseminated and four weeks after they give birth.³³
- They gnaw and bite the bars of their tiny crates until the bars are covered in blood (see picture below).³⁴
- They are only allowed to spend four weeks weaning their piglets in a crate that also does not have enough space to turn around.³⁵

³² *Id.* at 10–11.

³³ *Id.* at 11–12 (citations omitted).

³⁴ *Id.* at 13 (citing Humane Soc. U.S., *Undercover at Smithfield Foods* (2010) (“Undercover at Smithfield Farms”), available at <https://tinyurl.com/y5ctdvsr>).

³⁵ *Id.* at 5.

Below is a picture of the blood-coated gestation crates at a Smithfield/ Murphy-Brown breeding facility in Waverly, North Carolina³⁶:



As to veal, several states—but certainly not all—have banned or restricted the use of veal crates (Arizona, California, Colorado, Kentucky, Maine, Massachusetts, Michigan, Ohio, and Rhode Island).³⁷ But there is no federal law banning veal crates in the United States, meaning that many calves destined for veal (which is approximately half of all female calves) spend most of their sixteen-to-eighteen-week lives confined to a veal crate.³⁸ The crate is barely larger than the calf's body and too small for the calf

³⁶ *Id.* at 12–13 (citing Undercover at Smithfield Foods).

³⁷ *Higher Welfare For Veal Calves*, Compassion in World Farming, <https://www.ciwf.com/farmed-animals/cows/veal-calves/higher-welfare/> (last visited May 27, 2021) (“Higher Welfare for Veal Calves”).

³⁸ Doris Lin, *Learn Why Some Activists Are Avidly Against Eating Veal*, ThoughtCo. (July 18, 2019), <https://www.thoughtco.com/whats-wrong-with-veal-127519>.

to turn around.³⁹ Often, the calves are tethered to prevent movement and keep the flesh tender.⁴⁰ They are typically fed an unhealthy diet of milk or synthetic milk in order to keep their flesh pale.⁴¹ These incredibly unhealthy living conditions can cause disease, including chronic pneumonia and diarrhea.⁴²

The situation for hens is similarly egregious. Traditionally, hens have been subjected to extreme confinement to cages so small movement is near impossible.⁴³ “Industrial producers usually give hens less space than the area of a letter-sized sheet of paper in which to eat, sleep, lay eggs, and defecate.”⁴⁴ Such confinement prohibits natural behavior such as dustbathing, foraging, or nesting.⁴⁵ The hens are often so overcrowded that they cannot even spread their wings.⁴⁶ Hens on egg farms are

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*; see also Higher Welfare for Veal Calves.

⁴² *Veal: A Byproduct of the Cruel Dairy Industry*, PETA, <https://www.peta.org/issues/animals-used-for-food/animals-used-food-factsheets/veal-byproduct-cruel-dairy-industry/#:~:text=Cows%20produce%20milk%20for%20the,produce%20milk%20for%20human%20consumption> (last visited May 28, 2021) (citation omitted).

⁴³ See Jonathan R. Lovvorn & Nancy V. Perry, *California Proposition 2: A Watershed Moment for Animal Law*, 15 *Animal L.* 149, 152 (2009), <https://www.animallaw.info/article/california-proposition-2-watershed-moment-animal-law>.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

also typically denied access to sunlight and fresh air.⁴⁷

None of these facts were considered by the lower courts, which, again, makes this case a poor vehicle for this Court's review of the constitutionality of Proposition 12.

CONCLUSION

For the foregoing reasons, the *amici* support Respondents and respectfully submit that the petition for a writ of certiorari be denied.

Respectfully submitted,

HENRY S. WEISBURG
Counsel of Record
MATTHEW G. BERKOWITZ
CINDY GARO
J. IGNACIO SALDANA
MATTHEW A. WESTON
SHEARMAN & STERLING LLP
599 LEXINGTON AVENUE
New York, New York 10022
(212) 848-4000
hweisburg@shearman.com

Counsel for Amici Curiae

June 1, 2021.

⁴⁷ See *id.*