

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 OF *AMICUS CURIAE* PERDUE
PREMIUM MEAT COMPANY, INC., D/B/A NIMAN
RANCH IN SUPPORT OF RESPONDENTS**

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STATEMENT OF INTEREST¹

Amicus Curiae Perdue Premium Meat Company, Inc., d/b/a Niman Ranch (“PPMC” or “Niman Ranch”) is a corporation organized under the laws of the State of California. Its parent corporation is Perdue Farms Inc. PPMC is an industry leader in sustainable agriculture and humane animal care. PPMC’s Niman Ranch brand started in the early 1970s on a family-owned cattle ranch in Bolinas, California, raising cattle using traditional, humane methods—the same way they are raised today.

In the mid-1990’s, Niman Ranch expanded to raising hogs when fifth-generation family farmer Paul Willis of Thornton, Iowa joined Niman, founding the Niman Ranch Pork Company. Paul Willis has owned and operated the Willis Free Range Pig Farm in Iowa since 1975. The Niman Ranch hog program was started in response to the rise of factory farming in the United States. Niman Ranch recognized that gestation crates, farrowing crates, and intense confinement are cruel to highly intelligent animals like pigs.

Using sustainable farming techniques and strict animal husbandry standards, the Niman Ranch Pork Company has grown into a network of over 600 independent family hog farmers, and a total of 750 independent family farmers raising Certified Humane® beef, pork, and lamb. These farms are fully compliant with Proposition 12.

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

In addition to adhering to its commitment to no crates, Niman Ranch protocols require hogs to be raised on pasture or in deeply bedded pens; ensure bedding at all phases of a pig's life; and ban teeth clipping, tail docking, and antibiotics. Niman Ranch's long industry experience has taught Niman Ranch how to produce great tasting meat by caring for its animals, the land, and its farmers. *See* About Niman Ranch, *available at* <https://www.nimanranch.com/about-niman-ranch/> (last accessed Aug. 9, 2022). Other PPMC brands such as Coleman Natural Foods and Sioux Preme® Packing Co. produce or pack both Proposition 12-compliant and non-compliant pork products for sale in other states.

This Amicus brief is submitted to offer an alternative industry voice to demonstrate that compliance is straightforward and economically feasible, and that certain industry leaders have already implemented and satisfied compliance requirements. Like other non-California businesses, Niman Ranch has been able to meet all of the Proposition 12 requirements.

SUMMARY OF ARGUMENT

Contrary to Petitioners' apocalyptic predictions of the impact of Proposition 12, producers can and will adjust to the demands of the California market and raise hogs humanely without sacrificing their ability to earn profits. Niman Ranch's farms have been meeting the Proposition 12 standards and producing humanely raised pork for years. Hormel announced two years ago that it will do so. Even without Proposition 12, the market has shifted to create strong demand for pork that is farmed humanely and without cruelty. Proposition 12 reflects that shift

in consumer preferences. Because farmers can and do segregate sows for different markets, they can produce for the California market under Proposition 12 standards and for other markets under less rigorous standards if they choose. Proposition 12 thus will not substantially burden farmers with excessive costs—just costs reflecting the preferences of the California market. California’s interests in preventing complicity in the sale of inhumane food and protecting public health are sufficient to outweigh any burdens that Proposition 12 might impose.

ARGUMENT

Petitioners’ assertion that Proposition 12 will have “massive,” nearly apocalyptic impact on the pork industry, particularly on smaller family farms that will be driven out of business (Pet. Br. 2, 4, 19), greatly overstates the impact. Niman Ranch’s 600 pork-producing farms have been meeting Proposition 12’s humane standards for years without facing financial ruin. Likewise, Petitioners’ assertion that “[h]ardly any commercially bred sows are housed” in accord with Proposition 12’s standards (*id.* at 3) also is wrong. And Niman Ranch is hardly the only company that is able to both make a profit and avoid animal cruelty.

The reality is that Proposition 12 codifies animal welfare standards that producers like PPMC and retailers (such as Whole Foods) have been advancing for some time. For example, Whole Foods requires that companies that supply meat products to Whole Foods comply with the Global Animal Partnership (“G.A.P.”) base certification standards. *See* Whole Foods Market, Meat Department Quality Standards, *available at* <https://www.>

wholefoodsmarket.com/quality-standards/meat-standards (last accessed Aug. 9, 2022). The first companies that went through the additional effort and additional cost to meet G.A.P. Base Certification 1 compliance initially benefitted from those efforts and continued to do so as those costs normalized.² The same is true of many of PPMC’s animal welfare programs that created a solution for top grocers to get specialty natural products from leading authentic brands, all raised domestically from family farmers and ranchers, all high animal welfare, all no antibiotics or added hormones (ever) or organic and grass-fed. Retailers and producers are simply following consumer demand and their own humanitarian beliefs to produce what consumers want. Many of those consumers are the voters who overwhelmingly passed Proposition 12 in California.

Petitioners’ claims that Proposition 12 will materially harm producers if they are forced to comply also are overstated. Studies by the California Department of Food & Agriculture and University of California—Davis estimate the true additional cost to consumers for Proposition 12-compliant pork to average between \$8 and \$10 annually, an affordable amount indicating that producers will be able to pass true incremental costs on to consumers.³ This assumes the industry provides

2. Pertinent facts herein are supported by a declaration appended to an amicus memorandum filed by PPMC in parallel litigation filed in Iowa by anti-Proposition 12 groups, *Iowa Pork Producers Ass’n, et al. v. Bonta, et al.*, No. 3:21-cv-3018-CJW-MAR (N.D. Iowa), Decl. of Christopher Oliviero, Dkt. 38-2 (July 20, 2021).

3. See Cal. Dep’t Food & Agr., *Animal Confinement*, Notice of Prop. Action (May 25, 2021), https://www.cdffa.ca.gov/ahfss/pdfs/regulations/AnimalConfinement1stNoticePropReg_05252021.

adequate supply to meet demand, as demonstrated by past experience with programs such as G.A.P. and related products.

This is not a case about forced change and irreparable harm, but rather about voter/consumer preference and demand, the perspective of those industry leaders that choose to meet those preferences and demands, and basic industry competition to supply pork to those voters/consumers. Because the market is already shifting, the pork industry will not face irreparable harm. The economic path of the pork industry will be dictated by the inevitable need to comply with consumer preferences and demands embodied by Proposition 12. When it comes to consumer preferences, the writing is on the wall, and those preferences will prevail with or without Proposition 12. Those producers that prepare for and embrace that change will benefit. Those suppliers that refuse to meet humane standards for the confinement of breeding pigs will be left behind. These are competitive choices to be made by all pork producers, and there is no right to be protected from fair competition.

PPMC and other producers either already complied or moved swiftly to produce Proposition 12-compliant pork and were positioned to meet the confinement standards by January 1, 2022. Niman Ranch already had pork-raising practices in place that met the standards in Proposition

pdf; Hanbin Lee, et al., *Voter Approved Proposition to Raise California Prices* (2021), 24 ARE Update 5 (2021), Univ. of Cal. Giannini Found. of Agricultural Economics, available at https://www.cdfa.ca.gov/ahfss/pdfs/regulations/AnimalConfinement1stNoticePropReg_05252021.pdf (last accessed Aug. 9, 2022).

12. Coleman Natural Foods (also a brand owned by PPMC) was 50% compliant when Proposition 12 was enacted, having made the necessary conversions to its facilities, including the segregation of animals, and has worked with producers to ensure its readiness to serve California customers with whole pork meat that complies with the standards set by Proposition 12.⁴ Coleman Natural Foods is a leading supplier of fresh and further processed pork sources from family farmers who are 100% gestation and farrowing crate-free and never use antibiotics, exceeding the new state requirements in California. Coleman has worked with producers of premium pork products covered by Proposition 12, such as bacon produced at SugarCreek, to produce and segregate Prop 12-compliant product under its label from Coleman branded product that is not compliant. Likewise, Sioux-Preme® Packing Co. (also a brand owned by PPMC) prepared its packing facilities to segregate California-compliant pork to the extent any of its producers require packing for California-bound pork after January 1, 2022. Conversions to segregated structures were performed as an important investment to anticipate and reflect the new market demands.

As Coleman’s successful adaptation to changing market conditions indicates, segregation and tracing of product is more than possible. It is doable and is being

4. See Coleman Natural Foods, *Frequently Asked Questions*, How is Coleman Natural Foods responding to the Proposition 12 (California) and Question 3 (Massachusetts) initiatives?, available at <https://www.colemannatural.com/faqs/> (last accessed Aug. 9, 2022) (“Coleman has product available that meets, and in some cases, exceeds California’s Proposition 12 (The Farm Animal Confinement Initiative) This supply will dramatically increase over the coming months to meet demands of customers....”).

done; indeed, in some cases, it has been done for years in response to consumer demand for premium pork products.⁵ Petitioners’ assertions that it is “not currently possible” (Pet. Br. 16-17 n.7), “impracticable” (*id.* at 16), or “impossible” (Cert. Pet. 18) to segregate or segment supply chains to allow for “tracing from gilt to whole pork cut” (Pet. Br. 16-17 n.7), *see also id.* at 28-29, 46, are simply not correct. For these same reasons, Petitioners’ claim that it is impossible for farmers to “know where any particular pig’s meat will be sold” (*id.* at 16) is incorrect as well. Commercial brands tell their networks of farmers what types and cuts of pork they need and thus make clear what standards they need to follow. These brands in turn set alternative costing programs to compensate farmers accordingly. This already is done today for product that is raised without antibiotics and/or complies with elevated animal care programs such as G.A.P.

There is no great mystery as to whether and how the industry will adapt to meet Proposition 12 standards without affecting commerce to other states. The rest of the pork industry’s compliance with Proposition 12 should not be any different than PPMC’s experience. Indeed, it has not been, as evidenced by the fact that other major

5. In subsequent California litigation brought by plaintiffs following dismissal of the Iowa action cited in n.2, *supra*, *Iowa Pork Producers Ass’n, et al. v. Bonta, et al.*, No. 2:21-cv-09940-CAS-AFM (C.D. Cal.), a declaration by a California Dep’t of Food and Agriculture official, Dr. Annette Jones, was submitted that discusses segregation and tracing mechanisms used in the industry. *See id.*, Dkt. 69-1, Jones Decl. at 5 ¶¶ 17-18. PPMC concurs with Dr. Jones’ statements. *See also* Amicus Br. of Dr. Leon Barringer in Supp. of Respondents (addressing tracing and segregation mechanisms).

industry leaders have joined PPMC and announced their commitment to the confinement standards introduced by Proposition 12. For example, Hormel Foods announced *nearly two years ago*, that it:

confirmed that it faces no risk of material losses from compliance with Proposition 12. While Proposition 12 will add complexity to our supply chain, including costs associated with compliance, California is an important market for Hormel Foods and we will continue to meet the needs of our consumers and customers throughout the state.

Hormel Foods, Hormel Foods Company Information About California Proposition 12 (Oct. 6, 2020), *available at* <https://www.hormelfoods.com/newsroom/in-the-news/hormel-foods-company-information-about-california-proposition-12/> (last accessed Aug. 10, 2022). Hormel acknowledged that “California voters feel strongly about this issue and as a company that cares about its consumers, we will continue to work closely with our customers to ensure that our consumers in the state of California will still be able to purchase the Hormel Foods products that they depend upon.” *Id.*⁶

6. Hormel recently updated and reaffirmed this intention with a statement addressing its plans to produce pork that is compliant with Proposition 12 in California and Massachusetts’ Question 3. *See* Hormel Foods, California Proposition 12 and Massachusetts Question 3 Space Requirements for Animal Housing (“Hormel Foods has confirmed that it faces no risk of material losses from compliance with Proposition 12 and Question 3. While these measures will add complexity to our supply chain, including costs associated with compliance, California and

Tyson Foods made a similar announcement during a third-quarter earnings call in 2021: “Prop 12, it’s about 4% of total production.... Tyson is currently aligning incentivizing suppliers where appropriate. We can do multiple programs simultaneously, including Prop 12. So ... we can align suppliers, and we can certainly provide the raw material to service our customers in that way.” Tyson Foods, Third Quarter 2021 Earnings (Aug. 9, 2021), *available at* https://s22.q4cdn.com/104708849/files/doc_financials/2021/q3/08-11-21_Tyson-Foods-080921.pdf (last accessed Aug. 9, 2022). Moreover, Vande Rose Farms, based in Waucoma, Iowa, describes itself as “a 21st Century Pork Company, extending that same tradition by leading the industry with more California Prop 12 supply chain options than any other Pork Producer. We also offer the highest animal welfare supply chain with GAP certified farms supported by Certified Humane 3rd party audit programs.” LinkedIn, Vande Rose Farms, *available at* <https://www.linkedin.com/company/vande-rose-farms>.

Hatfield (Clemens Food Group’s principal pork brand) has similarly announced that it will offer Prop 12-compliant pork products in addition to its regular array of products:

Massachusetts are important markets for Hormel Foods and we will continue to meet the needs of our consumers and customers throughout these states.”), *available at* <https://www.hormelfoods.com/responsibility/our-approach-to-issues-that-matter/animal-care/hogs/#california-proposition-12-and-massachusetts> (last accessed Aug. 10, 2022); *see also id.* (Jan. 1, 2002 update explaining how Hormel will differentiate its products shipped into California with labeling as “Pork CA Prop 12 Compliant” and “Not Prop 12 Compliant” or “Only for Use at [specified destination]”).

Hatfield plans to offer a variety of pork products across our portfolio of bacon, marinated, and fresh pork items that meet the “Prop 12” and “Question 3” [Massachusetts] statutory requirements. Sows will be housed in pens that allow them to get up and turn around freely at all times, and have 24+ sq. ft. of usable floor space per sow.

Hatfield, *A Higher Standard of Animal Care*, “California Proposition 12 & Massachusetts Question 3 Compliant Portfolio” (2022), *available at* <https://simplyhatfield.com/about-us/our-commitment-to-animal-care/> (last accessed Aug. 10, 2022).

Such announcements make clear that Petitioners’ concerns about widespread harm to the industry, causing “greater industry consolidation” (Pet. Br. 4), putting “[s]maller sow farmers” out of business, *id.* at 15), are self-serving and overblown. Non-California markets will remain huge sources of business for farmers that, for whatever reason, do not opt for more humane treatment of their animals. To the extent that the price of some whole pork meat products might increase, if California consumers choose to pay those higher prices in exchange for California-bound products that comply with humane standards for the confinement of breeding pigs, that is their choice.

For these reasons, Proposition 12 does not substantially burden interstate commerce under the *Pike* balancing test or otherwise violate the dormant Commerce Clause. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). The substantial burden that Petitioners allege as meeting

the first *Pike* test is, as discussed above, belied by the actual market experience of PPMC and others. Whatever modest burden does exist does not clearly outweigh the benefits of the law. The absence of any discrimination or differentiation between in-state and out-of-state pork producers shows that Proposition 12 does not affect “simple protectionism” and, therefore, does not run afoul of the dormant Commerce Clause. *See Oregon Waste Sys., Inc. v. Dep’t of Env’t Quality of State of Or.*, 511 U.S. 93, 99 (1994); *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-72 (1981). Likewise, the mere fact that costs will increase for some producers does not constitute a cognizably substantial burden on interstate commerce. *See Exxon Corp. v. Gov. of Md.*, 437 U.S. 117, 127-28 (1978) (“[T]he [Commerce] Clause protects the interstate market, not particular interstate firms, from prohibitive or burdensome regulations.”). As then-Judge Gorsuch has explained, this Court’s decisions “have not gone nearly so far” as Petitioners contend and have not “declare[d] ‘automatically’ unconstitutional any state regulation with the practical effect of ‘control[ling] conduct beyond the boundaries of the State.’” *Energy & Env’t Legal Inst. v. Epel*, 793 F.3d 1169, 1174 (10th Cir. 2015)).

Finally, any such burden, when not unduly magnified by Petitioners’ hyperbole, is not “clearly excessive” in relation to the benefits of Proposition 12. California has an obviously legitimate interest in “eliminat[ing] inhumane and unsafe products ... from the California marketplace.” Cal. Sec’y of State, Voter Information Guide 70 (2018), <https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf>. *See, e.g., United States v. Stevens*, 559 U.S. 460, 469 (2010) (“[T]he prohibition of animal cruelty itself has a long history in American law, starting with the early settlement

of the Colonies.”). California’s interests in preventing sales of inhumane products and protecting public health are sufficient to outweigh any burdens that Proposition 12 might impose.

CONCLUSION

Petitioners’ challenge to Proposition 12 should be rejected, and the law approved by California voters and consumers should be upheld.

Respectfully submitted,

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