

IN THE SUPREME COURT OF THE UNITED STATES

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No. 21-468

NATIONAL PORK PRODUCERS COUNCIL, ET AL., PETITIONER

v.

KAREN ROSS, IN HER OFFICIAL CAPACITY AS SECRETARY  
OF THE CALIFORNIA DEPARTMENT OF FOOD & AGRICULTURE, ET AL.

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

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MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE  
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,  
AND FOR ENLARGMENT OF TIME FOR ARGUMENT

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Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting petitioners; that the time allowed for oral argument be enlarged to 70 minutes; and that the time for argument be allotted as follows: 20 minutes for petitioners, 15 minutes for the United States supporting petitioners, and 35 minutes collectively for respondents. Petitioners and respondents consent to this motion.

This case concerns a provision of a California statute, Proposition 12, that seeks to regulate pork production outside

California based on asserted animal-welfare and health-and-safety concerns. The relevant provision prohibits the sale in California of pork meat that is traceable to a breeding pig that California considers to have been confined anywhere in a "cruel manner." Cal. Health & Safety Code § 25990(b) (West Supp. 2022). Petitioners are two industry groups that represent farmers and pork producers. See Pet. Br. ii. Their complaint alleges that Proposition 12 violates the Constitution's "dormant Commerce Clause," Tennessee Wine & Spirits Retailers Ass'n v. Thomas, 139 S. Ct. 2449, 2459 (2019), by "regulating pork producers and the pork market outside the State of California" and "plac[ing] excessive burdens on interstate commerce without advancing any legitimate local interest," Pet. App. 230a-232a. The State respondents are Karen Ross, the Secretary of the California Department of Food & Agriculture, in her official capacity, and other California state officials who may be involved in the implementation of Proposition 12. See Pet. Br. ii. The other respondents are animal-welfare groups that had supported Proposition 12 and that successfully intervened in the district court to defend the measure against petitioners' challenge. See ibid.; see also Pet. App. 3a n.1.

The United States has filed a brief as amicus curiae supporting petitioners, arguing that the court of appeals erred in

holding that petitioners had failed to state a claim that Proposition 12 violates the Commerce Clause under this Court's decision in Pike v. Bruce Church, Inc., 397 U.S. 137, 142 (1970). The United States' brief further argues that, although this Court need not decide in this case the scope of the Commerce Clause's prohibition on extraterritorial regulation, see, e.g., Baldwin v. G. A. F. Seelig, Inc., 294 U.S. 511, 521 (1935), the court of appeals misread this Court's extraterritorial-regulation precedents to preclude only state laws that regulate out-of-state prices.

The United States has a substantial interest in this matter, particularly in light of the federal government's statutory responsibilities to guard against disease in livestock in interstate commerce, see Animal Health Protection Act, 7 U.S.C. 8301 et seq., and to oversee the safety of meat produced for human consumption throughout the Nation, see Federal Meat Inspection Act, 21 U.S.C. 601 et seq. In addition, the United States has a substantial interest in ensuring the free flow of interstate commerce throughout the Nation. The United States' experience with regulating livestock and overseeing the national economic market make the government well positioned to address several of the issues that are likely to bear on this Court's consideration of the questions presented in this case. In particular, the United

States argues in its brief that California has no legitimate local interest in the housing conditions of out-of-state animals, that petitioners have plausibly alleged that Proposition 12's asserted health-and-safety concerns are speculative, and that the court of appeals' view of the Commerce Clause, if accepted by this Court, would risk the sort of harms to the national economy and to national unity that the Framers wrote the Commerce Clause to avoid.

The United States has previously presented argument as amicus curiae in some of this Court's dormant Commerce Clause cases, including South Dakota v. Wayfair, Inc., 138 S. Ct. 2080 (2018) (No. 17-494), and Edgar v. MITE Corporation, 457 U.S. 624 (1982) (No. 80-1188).

In light of the substantial federal interest in the question presented, the United States' participation in oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR  
Solicitor General  
Counsel of Record for  
the United States

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