

IN THE SUPREME COURT OF THE UNITED STATES

No. 21-468

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

INTERVENOR RESPONDENTS'
MOTION FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of the Rules of this Court, the Intervenor Respondents respectfully move for divided argument in this case.¹ Oral argument is currently set for October 11, 2022. The Intervenor Respondents request that, of the total argument time allotted to respondents, the Intervenor Respondents be allotted 10 minutes of argument time and the State Respondents be allotted the remaining time.² Granting this motion will

¹ The Intervenor Respondents are the Humane Society of the United States, Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, and Animal Outlook.

² The State Respondents are Karen Ross, in her official capacity as Secretary of the California Department of Food and Agriculture; Tomas Aragon, in his official capacity as Di-

not require the Court to enlarge the total amount of time for argument.³ All parties consent.

1. This case concerns the constitutionality of California’s Proposition 12, an initiative to amend California’s Health and Safety Code to prohibit in-state sales of certain food products made from farm animals that have been subjected to extreme and unsanitary conditions of confinement. Enacted by an overwhelming majority of California voters, Proposition 12 prohibits businesses from selling, “within the state” of California, certain products from “covered animal[s] * * * confined in a cruel manner,” including sows “kept for purposes of commercial breeding” and their “offspring.” Prop. 12, §§3-4 (codified Cal. Health & Safety Code §§25990(b), 25991(a), (f)). Proposition 12 defines “cruel” confinement to encompass confinement “that prevents” sows “from lying down, standing up, fully extending [their] limbs, or turning around,” or that provides fewer “than 24 square feet of usable floorspace per pig.” *Id.* §4 (codified §25991(e)(1), (3)). The law also prohibits farmers inside California from using such practices. *Id.* §3 (codified §25990(a)).

Proposition 12’s Official Voter Information Guide explains that Proposition 12 “eliminate[s] inhumane and unsafe products from * * * abused animals from the California marketplace” and “reduces the risk of people being sickened by food poisoning.” Pet.App. 202a(¶270). “Scientific studies,” it observes, “repeatedly find that packing animals in tiny, filthy cages increases the risk of food poisoning.” Pet.App. 202a(¶272). The

rector of the California Department of Public Health; and Robert Bonta, in his official capacity as Attorney General of California.

³ The United States is concurrently seeking leave to participate in argument and for an expansion of argument time from 30 minutes to 35 minutes per side. Respondents have consented to that motion. Divided argument is sought in this motion, however, without regard to whether this Court expands the duration of argument.

law “eliminate[s] * * * from the California marketplace” products from sows “crammed inside tiny cages for their entire lives.” Pet.App. 201a-202a(¶270).

2. Petitioners—the National Pork Producers Council and the American Farm Bureau Federation—challenged Proposition 12 under the Commerce Clause, U.S. Const. art. I, § 8, cl. 3. They agree that Proposition 12 is not protectionist or discriminatory, and that it addresses only pork sold (or raised) in California. Petitioners contend that Proposition 12 in “practical effect” impermissibly regulates practices outside California. Pet.App. 231a(¶457). And they urge that it “plac[es] burdens on interstate commerce that are clearly excessive when compared with putative local benefits.” Pet.App. 231a(¶464). Proposition 12’s proponents—the Intervenor Respondents here—intervened and participated as a party throughout proceedings below. The district court held that petitioners failed to state a claim under the Commerce Clause, Pet.App. 22a, and the court of appeals affirmed, Pet.App. 2a. This Court granted review. 142 S. Ct. 1413 (2022) (mem.).

3. Divided argument is requested to provide the Court with the perspectives of both respondents—the non-governmental Intervenor Respondents and the State Respondents—at oral argument. The Intervenor Respondents request that the time allotted for respondents’ argument be divided so that they are allotted 10 minutes of that argument time and the State Respondents are allotted the remaining time. Jeffrey Lamken would present argument for the Intervenor Respondents. Dividing argument will afford the Court a full understanding of the distinct perspectives, experiences, and arguments of the two categories of respondents. Divided argument is particularly appropriate in the circumstances of this case, where one set of respondents encompasses a sovereign gov-

ernment and the other encompasses private organizations (here, Proposition 12's proponents), with unique perspectives and interests that might not otherwise be fully represented at argument. This Court has previously divided argument in similar circumstances where governmental and private parties appear on the same side of the case.⁴ The State Respondents and petitioners consent to this request for divided argument.

Respectfully submitted.

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⁴ See, e.g., *United States v. Texas*, 142 S. Ct. 416 (2021) (mem.) (private parties and State); *Trump v. Sierra Club*, 141 S. Ct. 1264 (2021) (mem.) (private parties and States); *Trump v. New York*, 141 S. Ct. 870 (2020) (mem.) (private party and States); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 140 S. Ct. 2665 (2020) (mem.) (United States and private party); *Dep't of Commerce v. New York*, 139 S. Ct. 1543 (2019) (mem.) (private parties and State); *Md.-Nat'l Capital Park & Planning Comm'n v. Am. Humanist Ass'n*, 139 S. Ct. 951 (2019) (mem.) (private parties, State, and the United States); *Masterpiece Cakeshop, Ltd. v. Colo. Civil Rights Comm'n*, 138 S. Ct. 466 (2017) (mem.) (private parties and States).