No. 24-728

In the Supreme Court of the United States

IOWA PORK PRODUCERS ASSOCIATION,

Petitioner,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS 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 IN OPPOSITION

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QUESTIONS PRESENTED

California's Proposition 12 restricts the in-state sale of certain pork products, regardless of whether they originate in-state or out-of-state. In *National Pork Producers v. Ross*, 598 U.S. 356 (2023), this Court upheld that statute against a challenge under the dormant Commerce Clause. The Court unanimously rejected the theory that Proposition 12 has impermissible extraterritorial effects. *See id.* at 375. And five Justices "decline[d] . . . petitioners' incautious invitation[]" (*id.* at 391) to invalidate Proposition 12 under the balancing test set forth in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), although they did not all agree on a single rationale. The questions presented here are:

1. Whether petitioner stated a claim that Proposition 12 is impermissibly discriminatory under the dormant Commerce Clause.

2. Whether the fractured *Pike* analysis in *National Pork* should be understood as "holding[]" (Pet. 19) that "a challenge to Proposition 12 states a claim under *Pike*" (*id.* at 16).

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STATEMENT

1. In 2018, California voters adopted Proposition 12, which "revised the State's existing standards for the in-state sale of eggs and announced new standards for the in-state sale of pork and veal products." *National Pork Producers Council v. Ross*, 598 U.S. 356, 365 (2023). In relevant part, "Proposition 12 forbids the in-state sale of whole pork meat that comes from breeding pigs (or their immediate offspring) that are 'confined in a cruel manner.'" *Id.* at 365-366 (quoting Cal. Health & Safety Code § 25990(b)(2)). The law "deem[s] confinement 'cruel' if it prevents a pig from 'lying down, standing up, fully extending [its] limbs, or turning around freely,'" *id.* at 366, or if there is "less than 24 square feet of usable floorspace per pig," Cal. Health & Safety Code § 25991(e)(3).

In the "spirited debate" preceding the enactment of Proposition 12, proponents argued that it "would go a long way toward eliminating pork sourced" in an inhumane "manner 'from the California marketplace.'" *Nat'l Pork*, 598 U.S. at 366. The proponents "also suggested that the law would have health benefits for consumers because 'packing animals in tiny, filthy cages increases the risk of food poisoning.'" *Id.* Similar concerns have long guided the choices of lawmakers when "enact[ing] laws aimed at protecting animal welfare." *Id.* at 365. And laws of that nature often "require some farmers and processors to incur new costs." *Id.* at 366. In the case of Proposition 12, the ballot materials warned that the increased cost of producing compliant pork would likely be "'passed through' to California consumers" in the form of higher prices. *Id.* The voters nonetheless approved the measure, with nearly 63% voting in favor. *Id.* at 365.

2. This petition is not the first challenge to Proposition 12 to reach this Court. In 2021, this Court denied certiorari in *North American Meat Institute v. Bonta*, 141 S. Ct. 2854 (2021) (No. 20-1215). The plaintiff in that suit argued that Proposition 12 impermissibly discriminates against out-of-state pork businesses. *See N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014, 1024 (C.D. Cal. 2019). It also argued that the law "impose[s] confinement standards for farm animals located outside California" in violation of "the extraterritoriality doctrine." *Id.* at 1029. Finally, invoking the test in *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970), the plaintiff contended that Proposition 12 unduly burdens interstate commerce. *See N. Am. Meat Inst.*, 420 F. Supp. 3d at 1032; *see also id.* at 1034 (denying preliminary injunctive relief); 825 F. App'x 518 (9th Cir. 2020) (affirming).

In *National Pork Producers Council*, this Court considered similar arguments. Unlike the challenger in the earlier case, the plaintiffs in *National Pork* "conceded that California's law does not implicate the antidiscrimination principle at the core of this Court's dormant Commerce Clause cases." 598 U.S. at 371. But they echoed the theory that Proposition 12 violates an "'almost *per se*' rule forbidding enforcement of state laws that have the 'practical effect of controlling commerce outside the State.'" *Id.* And they also alleged that Proposition 12 failed the test in *Pike*. *Id.* at 377. The district court dismissed the complaint, *see* 456 F. Supp. 3d 1201 (S.D. Cal. 2020), and the court of appeals affirmed, *see* 6 F.4th 1021 (9th Cir. 2021).

After granting certiorari, this Court unanimously rejected challengers' extraterritoriality theory. *See, e.g.*, *Nat'l Pork*, 598 U.S. at 375. Five Justices also rejected the challengers' *Pike* claim. *Id.* at 377. Four

members of the Court—Justices Gorsuch, Thomas, Sotomayor, and Kagan—concluded that the challengers failed to plausibly allege that Proposition 12 "imposes 'substantial burdens' on interstate commerce." *Id.* at 383 (plurality). Three members of the Court—Justices Gorsuch, Thomas, and Barrett—rejected the *Pike* claim on the alternative ground that Proposition 12's alleged burdens and benefits are "incommensurable." *Id.* at 382 (plurality); *see id.* at 381 ("How is a court supposed to compare or weigh economic costs (to some) against noneconomic benefits (to others)?").

Justice Barrett wrote separately to elaborate why she viewed "the benefits and burdens of Proposition 12 [as] incommensurable." 598 U.S. at 393 (Barrett, J., concurring in part). "California's interest in eliminating allegedly inhumane products from its markets," she explained, "cannot be weighed on a scale opposite dollars and cents—at least not without second-guessing the moral judgments of California voters or making the kind of policy decisions reserved for politicians." *Id.* Justice Barrett added, however, that "[i]f the burdens and benefits were capable of judicial balancing," she would have held that the plaintiffs had sufficiently alleged a substantial burden on interstate commerce. *Id.* at 394.

3. The petitioner here is the Iowa Pork Producers Association. In 2021, it filed its own dormant Commerce Clause challenge to Proposition 12. Pet. App. 93a. Petitioner also raised claims under the Due Process Clause, the Privileges and Immunities Clause, and the Packers and Stockyards Act, 7 U.S.C. § 192(b). *See* Pet. App. 119a-135a. The district court denied preliminary injunctive relief and dismissed petitioner's complaint. *See id.* at 18a-90a. The court of

appeals affirmed in an unpublished opinion. *See id.* at 1a-15a.

With respect to the dormant Commerce Clause challenge, the court of appeals first rejected petitioner's argument that Proposition 12 is impermissibly discriminatory, emphasizing that Proposition 12 "bans the sale of a product regardless of whether the product is intrastate or interstate in origin." Pet. App. 3a. The court also found it implausible that Proposition 12 was motivated by a "discriminatory purpose" or would have "discriminatory effects." *Id.* at 3a, 4a. Turning to the *Pike* claim, the court viewed petitioner's allegations as materially indistinguishable from the allegations considered—and deemed inadequate to state a claim—in *National Pork*. *See id.* at 5a ("We previously considered and rejected such a challenge."); *id.* at 6a ("The Supreme Court later affirmed[.]").

Judge Callahan concurred in the judgment. In her view, "there may . . . be a single underlying rationale" in this Court's *National Pork* opinions that could "save[]" petitioner's *Pike* claim. Pet. App. 12a (internal quotation marks omitted). "By my count," Judge Callahan explained, "a majority of the Justices would find that (i) Proposition 12 is compatible with *Pike* balancing, and (ii) [petitioner] plausibly alleged that Proposition 12 imposes a substantial burden." *Id.* As Judge Callahan acknowledged, however, that approach to vote-counting would be contrary to existing circuit precedent on the appropriate methodology for interpreting the precedential significance of Supreme Court opinions. *See id.* at 12a, 15a.

Petitioner sought rehearing en banc, but no judge requested a vote on the petition. Pet. App. 17a.

ARGUMENT

In *National Pork Producers v. Ross*, 598 U.S. 356 (2023), the Court rejected a dormant Commerce Clause challenge to California's Proposition 12. That statute has not changed since then. Petitioner now asks the Court to consider another dormant Commerce Clause challenge to Proposition 12. But it provides no persuasive reason for the Court to do so. Petitioner contends that review is warranted because it advances a claim that was "conceded away" (Pet. 26) in *National Pork*: that Proposition 12 "directly discriminate[s] against out-of-state farmers" (*id.* at 29). The reason that claim was conceded away in *National Pork* is that it lacks any merit—Proposition 12 enacts a neutral sales restriction that treats in-state and out-of-state farmers the same. Petitioner also asks the Court to review its claim under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). But it acknowledges that the claim is "just like the one" that five Justices of this Court rejected in *National Pork*. Pet. 16

The only thing genuinely new about this petition is its argument that, under *Marks v. United States*, 430 U.S. 188 (1997), the decision in *National Pork* should be read to contain a "holding[]" by a "five-Justice dissenting 'majority'" establishing that "a challenge to Proposition 12 states a claim under *Pike*." Pet. 16, 19, 26. That argument misunderstands both the *Marks* rule and the separate opinions in *National Pork*. In any event, this is not an appropriate case for considering academic questions about how the *Marks* rule should be understood or applied. Regardless of what "binding principles of law" (*id.* at 4) emerge from the fractured *Pike* analysis in *National Pork*, the *result* in that case was to reject a claim that was materially

identical to the one advanced by petitioner here. That result controls the outcome here.

1. Petitioner first asks the Court to review its claim that Proposition 12 discriminates against interstate commerce. Pet. ii. It emphasizes that while the challengers in *National Pork* "disavow[ed] any discrimination claim," *id.* at i, "[t]here is no such concession" here, *id.* at 16. But the challengers in *National Pork* made that concession for good reason. Proposition 12 is plainly nondiscriminatory: its restriction on the in-state sale of certain animal products applies whether the products originate in California or come from outside the State. *See* Cal. Health & Safety Code § 25990(b)(2).

In petitioner's view, Proposition 12 nonetheless amounts to "express discrimination" because it has a "disparate impact" on out-of-state pork businesses. Pet. 15. As this Court has recognized, however, facially neutral state laws are not impermissibly discriminatory for purposes of the dormant Commerce Clause merely because they disproportionately burden out-of-state businesses. *See, e.g.*, *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-472 (1981); *Exxon Corp. v. Governor of Md.*, 437 U.S. 117, 126 (1978). Neutral state laws qualify as discriminatory in "practical effect" only where they are *protectionist*—that is, where they favor in-state businesses at the expense of their out-of-state competitors. *E.g.*, *Hunt v. Wash. Apple Advert. Comm'n.,* 432 U.S. 333, 350 (1977); *see also Energy Mich., Inc. v. Mich. Pub. Serv. Comm'n*, 126 F.4th 476, 488-489 (6th Cir. 2025) ("the antidiscrimination principle is . . . a response to protectionist state law measures that proliferated during the pre-ratification period").

Petitioner raises no plausible allegation of protectionism here. True, "*some* out-of-state firms may face difficulty complying (or may choose not to comply) with Proposition 12." *Nat'l Pork*, 598 U.S. at 385 (plurality). But "from all anyone can tell, *other* out-of-state competitors seeking to enhance their own profits may choose to modify their existing operations or create new ones to fill the void." *Id.* Indeed, "a number of smaller out-of-state pork producers . . . filed an *amicus* brief" in *National Pork* "hailing the 'opportunities' Proposition 12 affords them to compete" with larger firms. *Id.* at 385 n.3 (citing Br. for Small and Independent Farming Businesses 1, 12, 19-20).

The principal economic impact of Proposition 12, moreover, is likely to be higher prices for *in-state* consumers. *See, e.g.*, *Nat'l Pork*, 598 U.S. at 386 (plurality). That is not the kind of harm that the dormant Commerce Clause is intended to prevent: where "the most palpable harm . . . is likely to fall upon the very people who voted for" the challenged law, "[t]here is no reason [for the courts] to step in." *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330, 345 (2007).

Petitioner contends that in-state farmers benefited from "unfair lead time" because they were subject (beginning in 2015) to an earlier voter initiative, Proposition 2, which prohibited the in-state confinement of breeding pigs in conditions where they cannot turn around. Pet. 15; *see id.* at 4-5, 28. But that history does not establish economic protectionism. California's in-state pork industry is tiny—"California imports almost all the pork it consumes." *Nat'l Pork*, 598

U.S. at 367.[1] And the production methods that must be followed to make Proposition 12-compliant pork extend beyond the previously enacted in-state confinement restrictions.[2] In response to Proposition 12, much of the industry moved quickly to develop confinement practices that comply with those restrictions.[3] In light of those circumstances, Proposition 2's earlier enactment provides no plausible basis for inferring that the voters conferred a material or lasting advantage on in-state economic interests. And petitioner's complaint does not contain any specific allegations supporting such an inference. *See, e.g.*, Pet. App. 3a-4a, 84a-85a.

This case marks the second time that the Ninth Circuit has rejected a discrimination challenge to Proposition 12 under the dormant Commerce Clause.

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[1] *See Nat'l Pork* Pet. for Writ of Cert. 2, https://tinyurl.com/4rnvuvu9 ("California imports 99.87% of its pork."); *Nat'l Pork* Pet. App. 205a, https://tinyurl.com/aevamkz6 (similar).

[2] Proposition 2 prohibited farmers in California from confining pigs during pregnancy in a manner that prevents them from "[l]ying down, standing up," "fully extending [their] limbs," or "[t]urning around freely." Former Cal. Health & Safety Code § 25990 (2015). Proposition 12 bars the in-state sale of pork if it was derived from a breeding pig (or its offspring) and the breeding pig was confined in a way that either (i) prevented it from "lying down, standing up, fully extending [its] limbs, or turning around freely" or (ii) denied it at least "24 square feet of usable floorspace per pig." Cal. Health & Safety Code § 25991(e)(1), (3). The first requirement of Proposition 12 took effect shortly after its enactment in late 2018; the latter requirement's effective date was January 1, 2022. *See id.*

[3] *See, e.g.*, Cal. Dep't of Food & Agric., *Lessons About Proposition 12 From Recent Pork Producer Visits* (July 2022), https://www.cdfa.ca.gov/AHFSS/pdfs/prop-12_pork_producer_visits.pdf (describing the state of compliance as of July 2022); *Nat'l Pork*, 598 U.S. at 385 n.3 (plurality) (similar).

See Pet. App. 2a-4a; *N. Am. Meat Inst. v. Becerra*, 825 F. App'x 518, 519 (9th Cir. 2020). This Court declined to review that question when it denied the petition in *North American Meat*. *See* Pet. for Writ of Cert. 22-27, *N. Am. Meat Inst. v. Bonta*, No. 20-1215 (June 28, 2021), *cert. denied*, 141 S. Ct. 2854 (2021). And petitioner does not argue that any relevant conflict of authority has emerged since then. Nor is any conflict likely to emerge. There is broad agreement among the courts of appeals about the legal standards governing discrimination claims under the dormant Commerce Clause.[4] And petitioners' discrimination theory turns on the timing and sequence of specific voter enactments in a single State.

2. Petitioner also contends that the court of appeals erred in holding that the complaint failed to state a claim under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). *See* Pet. 16-25, 29-30. That question, too, does not warrant further review. This Court already rejected a materially identical claim in *National Pork*. Petitioner's arguments about the application of the *Marks* rule to that decision lack merit and do not implicate any genuine conflict of authority.

a. Petitioner acknowledges that its *Pike* claim is "just like the one" in in *National Pork*. Pet. 16. Five justices of this Court rejected that claim. *Supra* pp. 2-

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[4] *See, e.g.*, *Town of Southold v. Town of E. Hampton*, 477 F.3d 38, 48 (2d Cir. 2007) (recognizing that a state law can be impermissibly discriminatory "in three ways": (i) "on its face," (ii) "by harboring a discriminatory purpose," or (iii) "in its effect"); *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 321 (5th Cir. 2022) (same); *Energy Mich.*, 126 F.4th at 487 (same); *R & M Oil & Supply, Inc. v. Saunders*, 307 F.3d 731, 734 (8th Cir. 2002) (same); *Int'l Franchise Ass'n, Inc. v. City of Seattle*, 803 F.3d 389, 399 (9th Cir. 2015) (same).

3. To the extent there are any distinctions between the two claims, they do not improve petitioner's prospects. Although petitioner advances arguments about "direct discrimination" in support of its *Pike* claim (Pet. 18), those arguments fail for the reasons discussed above. Petitioner's remaining allegations boil down to the concern that Proposition 12 imposes various economic burdens on farmers. *See, e.g.*, *id.* ("costly changes to farming operations"). But those allegations are no different in kind from the allegations that were before the Court in *National Pork*; indeed, the allegations here are far less detailed than the ones that five justices already deemed inadequate. *Compare* Pet. App. 95a-119a, *with Nat'l Pork* Pet. App. 155a-230a, https://tinyurl.com/aevamkz6.

To avoid the same fate, petitioner advances a novel theory of how the *Marks* rule should apply to the splintered *Pike* analysis in *National Pork*. *See* Pet. 16-19; *infra* pp. 11-13. But even if that theory were an appropriate way of discerning "what constitutes binding principles of law within a fractured Supreme Court decision," Pet. 4, it would not help petitioners here. The *result* of a Supreme Court decision is binding even if the Court provides no reasoning or fails to agree on reasoning. *See, e.g.*, *Mandel v. Bradley*, 432 U.S. 173, 176 (1977); *King v. Palmer*, 950 F.2d 771, 784 (D.C. Cir. 1991) (en banc); *Ballinger v. City of Oakland*, 24 F.4th 1287, 1295 (9th Cir. 2022). In applying that rule, courts ask whether the issue presented in the case at hand is "sufficiently the same" as in the prior case that produced a summary or fractured ruling. *E.g.*, *Hicks v. Miranda*, 422 U.S. 332, 346 n.14 (1975). Because petitioner's *Pike* claim is "just like" the one in *National Pork*, Pet. 16, the result in *National Pork* compels dismissal here. That accords with the fundamental "principle of treating similarly situated [parties] the

same"—which is critical to "the integrity of judicial review." *Teague v. Lane*, 489 U.S. 288, 304 (1989) (plurality) (internal quotation marks omitted).

b. In any event, petitioner's *Marks* theory is untenable. Petitioner reads *National Pork* to contain a "five-Justice dissenting 'majority'" (Pet. 26) establishing that "a challenge to Proposition 12 states a claim under *Pike*." *Id.* at 16. Petitioner derives that "holding[]" (*id.* at 19) by combining aspects of the four dissenting justices' views with a portion of the concurring opinion authored by Justice Barrett. *See id.* at i-ii, 16-19, 24-25. That theory fails in multiple ways.

To begin with, Justice Barrett did not say that the challengers in *National Pork* "state[d] a claim under *Pike*." Pet. 16. She instead described her view that the challengers had adequately "allege[d] a substantial burden on interstate commerce." *Nat'l Pork*, 598 U.S. at 394 (Barrett, J., concurring in part). But alleging a substantial burden is just the *first* step in stating a *Pike* claim. *See, e.g.*, *id.* at 377 (majority); *Exxon*, 437 U.S. at 127-128.[5] A plaintiff must also plausibly allege that the burden is "clearly excessive in relation to the putative local benefits." *Pike*, 397 U.S. at 142. Justice Barrett never addressed that aspect of *Pike* because she believed it was impossible to balance Proposition 12's "incommensurable" burdens and benefits. *Nat'l Pork*, 598 U.S. at 393 (Barrett, J., concurring in part). That belief, coupled with Justice Barrett's agreement that Proposition 12 serves legitimate moral and public health-based interests, *see id.* at 381-382 (plurality), appears to be inconsistent with

[5] *See also Flynt v. Bonta*, 131 F.4th 918, 925 (9th Cir. 2025) (Bress, J.) ("The Justices in *Pork Producers* . . . agreed that whether a law imposes a substantial burden on interstate commerce is a threshold inquiry[.]").

petitioner's view that the alleged economic burdens "clearly" exceed the putative local benefits.

More fundamentally, dissenting opinions cannot be used to produce "controlling" precedent. Pet. 19. "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who *concurred in the judgment[]* on the narrowest grounds.'" *Marks*, 430 U.S. at 193 (emphasis added). Dissenting justices, of course, do not "concur in the judgment." *See, e.g.*, *United States v. Robison*, 505 F.3d 1208, 1221 (11th Cir. 2007) ("*Marks* talks about those who 'concurred in the judgment[],' not those who did not join the judgment.").

That view tracks the way that this Court has previously described the nature and source of binding legal precedent. In *Seminole Tribe of Florida v. Florida*, 517 U.S. 44, 67 (1996), for example, the Court explained that precedent typically arises from the combination of "the result" in a particular case and the portions of the Court's legal reasoning "necessary to that result." Because dissenting opinions do not provide reasoning "necessary to [the] result," *id.*, they are not a source of binding precedent. *See, e.g.*, *King*, 950 F.2d at 783. Consistent with that view, the Court held in *Sackett v. EPA*, 598 U.S. 651, 659 n.3 (2023), that *Rapanos v. United States*, 547 U.S. 715 (2006), did not produce any controlling precedent. The holding in *Sackett* parted ways with several lower-court decisions that had attempted to derive controlling precedent by "combining [the] dissent" in *Rapanos* with either the plurality or concurring opinions in that case. *E.g.*, *United States v. Johnson,* 467 F.3d 56, 65 (1st

Cir. 2006); *see also United States v. Donovan*, 661 F.3d 174, 182 (3d Cir. 2011).

The authorities invoked by petitioner did not adopt a contrary view of the significance of dissents. *See* Pet. 23-25. In *Alexander v. Sandoval*, 532 U.S. 275, 281 (2001), the Court merely "assume[d] for purposes of deciding [the] case" that certain views expressed in prior plurality and dissenting opinions were correct. In *League of United Latin American Citizens v. Perry,* 548 U.S. 399, 414 (2006), the Court described the fractured opinions in *Vieth v. Jubelirer*, 541 U.S. 267 (2004), but did not treat any of those opinions as binding. And in *Nichols v. United States*, 511 U.S. 738, 740 (1994), the Court addressed an "issue that splintered the Court in *Baldasar v. Illinois,* 446 U.S. 222 (1980)." Rather than treating any aspects of *Baldasar* as binding, however, the Court "reexamin[ed] that decision" and reached a different conclusion in an opinion that commanded a majority of the Court. 511 U.S. at 746; *see also Hughes v. United States*, 584 U.S. 675, 680 (2018) (similar).

c. Petitioner also contends that its *Pike* claim implicates "critically important issues" and a "hopeless split among the circuits." Pet. 4, 22. But petitioner's arguments about the legal and practical implications of its *Pike* claim (*see id.* at 20-22) were before the Court in *National Pork*. *Compare, e.g.*, 598 U.S. at 390-391, *with, e.g.*, *id.* at 407 (Kavanaugh, J., concurring in part and dissenting in part). Petitioner does not identify any intervening developments that would justify certiorari here. To the contrary, the pork industry appears to be performing quite well. *See, e.g.*, Global Ag Media, *Great Improvement Seen in US Pork Sector in 2024*, (July 16, 2024), https://tinyurl.com/4tx5uz54 ("[e]xports are in outstanding shape," "falling feed

costs [have] played a pivotal role in improving producer profitability," and the number of "pigs [produced] per litter continues to surge").

Petitioner's allegation of a circuit conflict is no more persuasive. To date, only one published appellate decision has squarely addressed the scope of the Court's holding in *National Pork* as to *Pike*. *See Truesdell v. Friedlander*, 80 F.4th 762, 774 (6th Cir. 2023) (treating the four-justice plurality opinion as "controlling"). And in the two years since *National Pork* was decided, the courts of appeals have uniformly respected this Court's instruction to exercise "'extreme caution'" before allowing a *Pike* claim to move beyond the pleading stage. 598 U.S. at 390 (majority); *see, e.g.*, *Just Puppies, Inc. v. Brown*, 123 F.4th 652, 670 (4th Cir. 2024); *Forever Fencing, Inc. v. Bd. of Cnty. Comm'rs of Leavenworth Cnty.*, 2024 WL 3084973, at *5 (10th Cir. June 21, 2024).

Abstracting to a higher level of generality, petitioner asks the Court to address a "circuit split on how to interpret fractured Supreme Court opinions." Pet. 22. But petitioner fails to establish a live conflict. According to petitioner, four circuits have "held that dissenting votes may count towards determining the majority view . . . from a fractured Supreme Court opinion." *Id.* at 23. The decisions of two of those four circuits—the First and Third—were overturned by the Court's recent decision in *Sackett*. *Supra* pp. 12-13; *see Johnson*, 467 F.3d at 65; *Donovan*, 661 F.3d at 182. And there is no indication that those circuits will persist in their views about the relevance of dissenting opinions after *Sackett*.

The other two circuit decisions mentioned by the petition do not support petitioner's views about the proper role of dissents. *See* Pet. 23. In *Holland v. Big*

River Minerals Corp., 181 F.3d 597, 606 (4th Cir. 1999), the Fourth Circuit did not decide whether the splintered opinions in *Eastern Enterprises v. Apfel,* 524 U.S. 498 (1998), produced controlling precedent.[6] And in *Hopkins v. Jegley*, 968 F.3d 912, 915 (8th Cir. 2020), the Eighth Circuit merely applied the *Marks* rule to treat the Chief Justice's concurring opinion in *June Medical Services v. Russo*, 591 U.S. 299 (2020), as controlling.[7] The Eighth Circuit did not suggest (let alone hold) that it was necessary to consult the views of dissenting justices. *See Hopkins*, 968 F.3d at 915.

3. Finally, petitioner argues that granting review would enable the Court to address "many other claims" that were not presented in *National Pork*, including claims under the Due Process Clause, the Privileges and Immunities Clause, and the Packers and Stockyards Act. Pet. 19; *see id.* at 3, 20, 30-33. For their part, petitioner's amici invite the Court to address several claims that petitioner does not even mention, including claims under the Full Faith and Credit Clause, *see* Br. of Iowa et al. 14-15, the Import-Export Clause, *see id.* at 12-14, and article IV's guarantee of a "republican form of government," *e.g.*, Br. of Phyllis Schlafly Eagles 8; *see id.* at 8-10. For the reasons provided by the court of appeals, the additional claims raised by petitioner are plainly meritless. *See* Pet. App. 8a-11a. And each of these additional claims falls outside the questions that petitioners chose to present, which focus solely on the dormant Commerce Clause. *See* Pet. i-ii; *see also* S. Ct. R. 14.1(a) ("Only the questions set

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[6] *See, e.g.*, *Holland*, 181 F.3d at 606 (assuming without deciding that the concurring and dissenting opinions "worked [a] change with respect to takings jurisprudence").

[7] This Court later abrogated *Hopkins* in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022).

out in the petition, or fairly included therein, will be considered by the Court.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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