

No. 25-1047

In the Supreme Court of the United States

TRIUMPH FOODS, LLC, *ET AL*,

Petitioners,

v.

ANDREA J. CAMPBELL, IN HER OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF MASSACHUSETTS, *ET AL.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

**BRIEF OF IOWA AND 23 OTHER STATES
AS AMICI CURIAE IN SUPPORT OF
GRANTING THE PETITION**

BRENNA BIRD

Attorney General of Iowa

ERIC WESSAN

Solicitor General

Counsel of Record

BREANNE STOLTZE

Assistant Solicitor General

1305 E Walnut Street

Des Moines, IA 50319

(515) 823- 9117

eric.wessan@ag.iowa.gov

Counsel for Amici Curiae

(additional counsel listed in addendum)

QUESTIONS PRESENTED

1. Whether the Federal Meat Inspection Act imposes more or different—even if non-conflicting—requirements on pork producers, and is thus preempted by the FMIA under principles of express or implied preemption?

2. Whether the Act violates the dormant Commerce Clause or the other constitutional doctrines sufficiently pleaded in the Complaint?

TABLE OF CONTENTS

QUESTIONS PRESENTEDi
TABLE OF CONTENTSii
TABLE OF AUTHORITIES..... iii
INTEREST OF AMICUS CURIAE..... 1
SUMMARY OF ARGUMENT 3
ARGUMENT..... 4
 I. QUESTION 3 HARMS AGRICUTURAL
 STATES AND CONSUMERS..... 4
 II. QUESTION 3 HAS STARTED AN
 INTERSTATE RACE-TO-THE-BOTTOM 9
 III. QUESTION 3 VIOLATES THE
 CONSTITTUTION 13
CONCLUSION 16
APPENDIX
ADDITIONAL COUNSEL 1a

TABLE OF AUTHORITIES

Cases

<i>Baldwin v. G.A.F. Seelig, Inc.</i> ,	
294 U.S. 511 (1935).....	11, 13
<i>Baldwin</i> ,	
267 U.S.	14
<i>Brown v. Maryland</i> ,	
25 U.S. 419	19
<i>Camps Newfound/Owatonna, Inc. v. Town of Harrison</i> ,	
520 U.S. 564 (1997).....	18
<i>Carroll v. Lanza</i> ,	
349 U.S. 408 (1955).....	21
<i>Comptroller of Treasury of Md. v. Wynne</i> ,	
575 U.S. 542 (2015).....	18, 19
<i>CTS Corp. v. Dynamics Corp. of Am.</i> ,	
481 U.S. 69 (1987).....	11, 12
<i>Franchise Tax Bd. of California v. Hyatt</i> ,	
587 U.S. 230 (2019).....	24, 25
<i>H.P. Hood & Sons, Inc. v. Du Mond</i> ,	
336 U.S. 525 (1949).....	15
<i>Healy v. Beer Inst., Inc.</i> ,	
491 U.S. 324 (1989).....	11, 13, 28
<i>Hoyt v. Sprague</i> ,	
103 U.S. 613 (1881).....	23
<i>Hughes v. Fetter</i> ,	
341 U.S. 609 (1951).....	26
<i>Hughes v. Oklahoma</i> ,	
441 U.S. 322 (1979).....	10
<i>Learning Resources, Inc. v. Trump</i> ,	
146 S.Ct. 628 (2026).....	20
<i>Michelin Tire Corp. v. Wages</i> ,	
423 U.S. 276 (1976).....	10

Nat'l Pork Producers Council v. Ross,
 598 U.S. 356 (2023) 5, 6, 9, 14, 17, 18, 20, 21, 23, 24
Northwest Austin Mun. Util. Dist. No. One v. Holder,
 557 U.S. 193 (2009)..... 25
*Oregon Waste Sys., Inc. v. Department of Env'tl.
 Quality*,
 511 U.S. 93 (1994)..... 28
Paul v. Virginia,
 75 U.S. (8 Wall.) 168 (1868)..... 27
Pike v. Bruce Church, Inc.,
 397 U.S. 137 (1970)..... 28
Powell v. Khodari-Intergreen Co.,
 334 N.W.2d 127 (Iowa 1983)..... 28
Rositzky v. Rositzky,
 46 S.W.2d 591 (Mo. 1931)..... 29
Shelby County v. Holder,
 570 U.S. 529 (2013)..... 25
Styczinski v. Arnold,
 46 F.4th 907 (2022)..... 24
Toomer v. Witsell,
 334 U.S. 385 (1948)..... 26
Woodruff v. Parham,
 75 U.S. 123 (1869)..... 19
World-Wide Volkswagen Corp. v. Woodson,
 444 U.S. 286 (1980)..... 25

Statutes

Colo. Rev. Stat. § 40-2-124 15
 Mass. Gen. Laws Ch. 129 App., § 1–3..... 2, 22
 U.S. Const. amend. VI..... 27
 U.S. Const. art. I, § 10..... 17
 U.S. Const. art. IV, § 1 21, 26
 U.S. Const. art. IV, § 2 27

Regulations

Cal. Code. Regs. Tit. 17, § 95481 15
Or. Admin. R. 340-253-0040..... 15

Other Authorities

Boris I. Bittker & Brannon P. Denning, *The Import-Export Clause*, 68 Miss. L.J. 521 (1998)..... 17, 18
Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249 (1992) ... 21
James W. Coleman, *Importing Energy, Exporting Regulation*, 83 Fordham L. Rev. 1357 (2014) 15
Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 Notre Dame L. Rev. 1133 (2010) 21

INTEREST OF AMICUS CURIAE¹

Suppose Iowa voters worried about overfishing and the inhumane harvesting of Atlantic shellfish. So the Iowa Legislature passes a law about how lobsters, clams, and steamers must be harvested to be lawfully sold in the State. For example, lobsters must be able to turn around in the lobster cages that capture them. Perhaps the Atlantic fishermen think that the rules are unworkable and would dramatically raise the cost of otherwise ethical fishing. Iowa neither employs nor consults experts within the field—the Iowa-based Atlantic fishing community is not that large. And so, without fishermen to raise their concerns with local legislators or voters, this new hypothetical law is enacted.

While that law equally affects Atlantic fishermen across the country, it likely would impose greater compliance costs on States that have a more meaningfully sized fishing industry than Iowa. Even more so if other Midwestern states joined the ethical crusade. That is no different from the current approach of some States that do not raise hogs trying to impose unworkable restrictions in States that do. And while consumers in the regulating States will pay higher prices as a result, the economic implications are far greater—and more troubling. The structural constitution precludes that result.

The States of Iowa, Alabama, Alaska, Arkansas, Florida, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Ohio, Oklahoma,

¹ Pursuant to Rule 37.2, amici provided timely notice of their intent to file this brief to all parties.

South Carolina, South Dakota, Tennessee, Texas, Utah, West Virginia, and Wyoming submit this brief in support of Plaintiffs because Massachusetts's Question 3 imposes a detrimental and overly burdensome regulatory scheme on the almost entirely out-of-Massachusetts pig farmers and pork processors in their respective States. This Court should remedy what has become a muddy jurisprudential sty.

One part of Question 3, the Prevention of Farm Animal Cruelty Act, governs “farm owner[s and] operators within the Commonwealth of Massachusetts.” Mass. Gen. Laws Ch. 129 App., § 1–2. But Question 3 also makes it unlawful for a business to sell within Massachusetts “any . . . [w]hole pork meat that the business owner or operator knows or should know is the meat of a covered animal [or]of the immediate offspring of a covered animal” if the covered animal was “confined in a cruel manner,” as defined by the Question. *Id.* § 1–3. “Whole pork meat” includes uncooked pork, like bacon, ham, roast, and brisket. *Id.* § 1–5.

On its face, Question 3 appears only to regulate sales of pork that occur in Massachusetts. But its reach is much broader. Question 3 denies market access to out-of-state pork farmers and processors unless their practices comply with Massachusetts's mandates.

Question 3's broad sweep will harm agricultural states. Iowa, for example, is the top pork-producing and exporting State. 2020 Iowa Pork Industry Report 7 (May 2020), *available at* <https://perma.cc/3DFZ-SV5N>. The pork industry employs more than 147,000 Iowans and contributes billions of dollars annually to Iowa's economy. *Id.*

Beyond Iowa, hog farmers are critical to many States' economies. Massachusetts Question 3 will disrupt the pork industry by imposing stringent requirements inconsistent with industry practices on hog farmers and pork processors across the country.

The First Circuit's approach declines to address the arrogation of authority and abrogation of other States' sovereign authority imposed by Question 3. This Court should grant certiorari and allow the Petitioners' case to proceed.

SUMMARY OF ARGUMENT

Massachusetts has fired shots in what could be an interstate trade war. Rather than respect her sister States' regulatory approach to raising pork in their own States, Massachusetts seeks to substitute its own inexpert judgment for what regulations are best. Question 3 requires pork producing States to oversee massive disruption in vital businesses to establish two supply chains: one to sell pork in Massachusetts and one to sell everywhere else.

Even if Massachusetts's trade war on best practices was limited only to Massachusetts it would be a major problem. Prices in Massachusetts have spiked over the past two years, making feeding Massachusetts nutritious and healthy pork even more expensive. But other States are imposing their own nationwide regulations that pork produced outside of their States must follow or risk being prohibited from sale. Not yet are there conflicting regulations between those States, but establishing a patchwork of mandatory regulations across the fifty States risks undermining one of the core pieces of our federalist system.

Mutual respect rather than imperious regulation should be the norm. And unlike this Court's earlier case in *National Pork Producers Council v. Ross*, Petitioners here have raised and preserved the discrimination and interest-balancing claims at issue. This Court should find that the balances weigh against allowing Massachusetts to tell States across the country how to raise hogs.

Beyond those precedents, there are many potential constitutional infirmities with Question 3. On remand, with this Court's instruction, the district court can fully address those constitutional issues in the first instance. To reach some of those issues, this Court must address precedents that violate the original understanding of the clauses that they interpret.

The amici States respectfully request that the Court reverse the First Circuit to enjoin enforcement of Question 3.

ARGUMENT

I. QUESTION 3 HARMS AGRICULTURAL STATES AND CONSUMERS

Question 3 has already forced out-of-state farmers to endure enormous compliance costs. Economic studies conducted on California's less burdensome law estimate that compliance will cost hog producers in the United States between \$294 million and \$348 million. Brief of Iowa Pork Producers Ass'n, *et al.* as *Amici Curiae*, p. 17, *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023) ("*NPPC*").

To contextualize those numbers, an “average barn might cost \$1,600 to USD 2,500 per sow, or \$3 million to \$4.5m million in total.” Erica Shaffer, *Rabobank: California’s Prop 12 a Call to Lead on Animal Welfare*, MEAT+POULTRY (2021), <https://perma.cc/TUZ5-SX5V>. But laws like Massachusetts’s Question 3 will raise those costs to “averag[e] as much as \$3,400 per sow.” *Id.* Farmers’ costs will double—causing some farmers to go out of business and dramatically raising consumer costs. That stems from legal changes like elevated building costs of these luxury accommodations. *See id.*

Small, independent hog farmers will be devastated. Most pig farmers continue to operate independent farms, with 52,984 independent pig farms holding 25.6 million pigs in inventory, according to the 2022 Agricultural Census. Nat’l Agric. Stat. Serv., 2022 Census of Agriculture: U.S. Nat’l Level Data, Table 23, <https://perma.cc/M3FE-KJA9>. Of those farms, about 90 percent had fewer than 100 pigs in inventory. *Id.*

Question 3 will disproportionately affect those farms because small farmers generally have “a lower return to investments and therefore will likely realize less favorable terms of credit.” Barry K. Goodwin, *California’s Proposition 12 and its Impacts on the Pork Industry* (May 13, 2021), at 8–9. Thus, they “will be the least able to undertake the changes that would make facilities comfortable.” *Id.* Question 3 thus places an added burden on a substantial and already contracting segment of the industry. From 2017 to 2022, the number of independent farms with herds of fewer than 100 pigs dropped by about 9 percent. *Compare* Nat’l Agric. Stat. Serv., 2022 Census of

Agriculture: U.S. Nat'l Level Data, Table 23 *with* Nat'l Agric. Stat. Serv., 2017 Census of Agriculture: U.S. Nat'l Level Data, Table 23, <https://perma.cc/D3TY-62EJ>.

Expensive regulations will “hasten the concentration of the hog Industry, with smaller farmers exiting the sector, leaving a US hog industry that has fewer but larger farms.” Goodwin, *supra*, at 10.

Indeed, the problem is not isolated to Massachusetts. In the wake of *National Pork Producers*, other States have imposed their own, different, pork-related mandates. The potential financial effect on farmers will continue to increase if other States impose similar unworkable regulations with their own idiosyncrasies inconsistent with those in Massachusetts. For example, farmers in Iowa could invest millions of dollars to remodel their hog farms to comply with Massachusetts’s requirements only to find California enacting a law imposing larger housing requirements per pig. See Brief of Iowa Pork Producers Ass’n, *et al.* as *Amici Curiae*, p. 17.

How many States with different and perhaps conflicting regulations must hog farmers comply with? There is a real risk of forcing those farmers to continuously “invest millions of dollars in capital expenditures” to “comply with everchanging standards that other states choose.” *Id.* at 18.

While Question 3 is expensive, non-compliance may cost pork producers even more. If farmers and pork processors do not adjust to the new rules, they may be shut out of Massachusetts entirely. Because Massachusetts “is [the] distribution hub for Vermont,

New Hampshire, Rhode Island and Maine,” Question 3 “could affect the production and sale of pork across a broad swath of the country.” The Editorial Board, *Massachusetts Wants Your Bacon*, WALL STREET JOURNAL, (Aug. 10, 2022), <https://perma.cc/9HR8-9KDQ>.

And hog farmers probably will not be the hardest hit. The increased costs on raising and processing pork will make American consumers squeal. Pork prices are already high enough. In 2021, pork prices rose 12.1 percent from the year before. Brian Deese, *et al.*, *Addressing Concentration in the Meat-Processing Industry to Lower Food Prices for American Families*, THE WHITE HOUSE (Sept. 8, 2021), <https://perma.cc/AJ7F-XFAA>. And in October 2022, pork prices hit a record level of \$5.05 per pound. Jennifer Shike, *Here’s a Look at Pork Price Spreads*, PORK BUSINESS (May 15, 2023), <https://perma.cc/N23H-CA5H>.

Costly regulations mean expensive pork. Indeed, early data on California’s less-burdensome Proposition 12 already shows that consumers are seeing higher pork prices at the grocery store. Three USDA economists analyzed preliminary retail scanner data and found that pork prices in California rose 20 percent on average since July 1, 2023, when the State began implementing the new regulations. *See* Hannah Hawkins, Shawn Arita, & Seth Meyer, *Proposition 12 Pork Retail Price Impacts on California Consumers*, U.C. Giannini Found. of Agric. Econ., ARE Update 27(3), 5–8 (2024), available at <https://perma.cc/Z8ET-D4Q4>.

The price of some pork products increased even more. For example, after Proposition 12 went into

effect, the price of pork loins rose by more than 40 percent. *Id.* at 5. That means California consumers are paying an extra \$1.04 per pound for bacon, \$0.54 per pound more for ribs, and an additional \$1.42 per pound for pork loin—the three most-purchased pork products by California consumers. *Id.* at 7. Those price increases continued after the regulations were fully implemented on January 1, 2024. More regulations will continue to inflate prices.

High pork prices disproportionately affect lower-income households. Laws like Question 3 may “lead to a decline in the number of options” and “make certain pork products too expensive for lower-income people.” Alicia Wallace, *Pork Is Already Super Expensive. This New Animal-Welfare Law Could Push Prices Higher*, CNN BUSINESS (Oct. 17, 2021), <https://perma.cc/42YJ-CF7J>. That shift will hurt the pocketbooks of folks who have long relied on pork as a low-cost, high protein option for feeding their families.

Question 3 also jeopardizes Americans’ health and safety. Scientific literature suggests that animal-confinement regulations, like those Question 3 mandates, could worsen animal health and welfare and introduce extra risk to standardized sanitary practices. Counter-intuitively for nonfarmers, sometimes larger pens increases the risk of injury and illness for hogs. For example, housing hogs in larger individual stalls increases the risk of disease transmission. Those spaces mean that pigs are more likely to come into nose-to-nose contact and share water and feeding systems. *See* Brief for American Association of Swine Veterinarians as Amicus Curiae, p. 4–19, *NPPC*, 598 U.S. 356. Therefore, Question 3 has real risks for human health.

II. QUESTION 3 HAS STARTED AN INTERSTATE RACE-TO-THE-BOTTOM.

The Framers’ “central concern . . . for calling the Constitutional Convention” was “the conviction that, in order to succeed, the new Union would have to avoid the tendencies toward economic Balkanization that had plagued relations among the colonies and later among the States under the Articles of Confederation.” *Hughes v. Oklahoma*, 441 U.S. 322, 325 (1979). “One of the major defects of the Articles of Confederation . . . was the fact that the Articles essentially left the individual States free to burden commerce both among themselves and with foreign countries very much as they pleased.” *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 283 (1976).

Yet, Question 3—and ballot initiatives like it—reinvigorate those isolationist tendencies and undermine the economic union the Framers created. “The entire Constitution was ‘framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division.’” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 336 n.12 (1989) (quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935)). Question 3 sows this division in multiple ways:

First, Question 3, creates a “risk of inconsistent regulation by different States.” *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 89 (1987). Here, Massachusetts’ requirements for pig farms and pork processors deviate from lawful industry practices across the country. Massachusetts itself has few hog farmers or pork producers—most live elsewhere. That

means, in effect, that the State is trying to regulate a market in which it lacks expertise and economic stake.

Iowa, for example, produces a lot of pork. In 2020, the pork industry contributed \$40.8 billion in output, and more than 147,000 jobs to Iowa's economy. 2020 Iowa Pork Industry Report, at 7 (May 2020), *available at* <https://perma.cc/8PB8-QYLY>. Hogs generated \$893 million in state and local taxes and \$1.3 billion in federal taxes. *Id.* That same year, Iowa had more than 5,400 pig farms and housed nearly one third (almost 25 million) of the nation's hogs. *Id.* at 6.

Contrast Iowa with Massachusetts, which purchases nearly all pork sold within its borders from other states. Chris Lisinski, *New Mass. Law on Pork Sales Takes Effect This Month* (Aug. 8, 2023), NBC BOSTON, <https://perma.cc/24J7-NE2M>. Its residents annually consume 396 million pounds of pork but produce only 1.9 million in state. Thus, Massachusetts produces less than one-half of one percent of the pork it eats. *Id.* Yet Question 3 directs pork-producing States to reorganize their industries based on the "moral" sensibilities of its voters—the equivalent of Iowa, a land-locked state, passing a law on the "humane" harvesting of shellfish.

Massachusetts' unlawful mandate comes at a cost and affects every link on the supply chain. As occurred in California after Proposition 12, to continue selling pork products in New England, "U.S. grocery retailers, meat wholesalers, and pork processors will need to split the pork supply chain into two separate classes of product; 1) pork products that are compliant with [Massachusetts's Question 3] and destined only for that market, and 2) traditional pork products that make no claims about compliance." Goodwin, *supra*,

at 3. Those tiers will create artificial scarcity and skyrocketing prices in New England, while creating an artificial glut and price collapse in other markets. *Id.* at 3–40. The market segmentation directly undermines the “maintenance of a national economic union unfettered by state-imposed limitations on interstate commerce” that the Framers sought to create. *See Healy*, 491 U.S. at 335–36 n.12.

Second, upholding Question 3 could drag other States into a regulatory “race to the bottom” that extends beyond just pork. As Justice Cardozo once warned, allowing one state to project its regulation into another would mean “the door had been opened to rivalries and reprisals that were meant to be averted by subjecting commerce between the states to the power of the nation.” *Baldwin*, 294 U.S. at 522. For example, imagine Washington—the State with the highest minimum wage—refusing to allow sale of products from States with a lower minimum wage. Or imagine a State prohibiting “the retail sale of goods from producers that do not pay for employees’ birth control or abortions.” Brief of Indiana and 25 Other States as Amici Curiae, p. 33, *NPPC*, 598 U.S. 356.

Upholding Question 3 invites States to upend national markets based on “flavor of the day” policy preferences and so “effectively force other States to regulate in accordance with those idiosyncratic state demands.” *NPPC*, 598 U.S. at 407 (Kavanaugh, J., concurring in part and dissenting in part). State appeals to health and economic welfare should not suffice. “To give entrance to that excuse would be to invite a speedy end to our national solidarity.” *Baldwin*, 267 U.S. at 523.

Indeed, State efforts to exert unilateral control over large sectors of the national economy already are increasingly common. For example, in the field of energy regulation, Oregon and California regulate greenhouse gas emissions along the electricity supply chain leading to those states. Cal. Code. Regs. Tit. 17, § 95481; Or. Admin. R. 340-253-0040; *see also* James W. Coleman, *Importing Energy, Exporting Regulation*, 83 Fordham L. Rev. 1357 (2014). And Colorado regulates the renewable energy portfolios of power companies selling electricity for the State's use. Colo. Rev. Stat. § 40-2-124. Laws and ballot initiatives like Question 3 thus invite States to revert to a time when "each state would legislate according to its estimate of its own interests, the importance of its own products, and the local advantages or disadvantages of its position in a political or commercial view." *H.P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 533 (1949) (internal quotation omitted).

Third, Massachusetts' attempt to become the nation's pork police reflect similar efforts by other States that have led to bad results. For example, California's energy efficiency efforts show "how even well-intentioned regulation presents a temptation toward protectionism." Coleman, *supra*, at 1386. During its implementation, California altered the standard to break ethanol into two geographic categories, "California" and "Midwest," assigning a higher carbon intensity score to Midwest ethanol compared to ethanol produced the same way in California. *Id.* at 1386–87.

That out-of-State discrimination failed. No more should this Court affirm Massachusetts's desire to be the nation's pork regulator than it should

California's. That single-State supremacy is not what the States intended when they joined the Constitution. Even then, because California could not stomach such strict regulations on an industry present in the state "it exempted unconventional oil despite its similar emissions profile." *Id.* at 1387. That served as the policy's legal downfall. The pork producers are not so lucky.

State policy "experiments" like Question 3 are "fertile ground for protectionist measures that would at best forfeit the efficiency and reliability benefits of integrated . . . markets, and at worst, could ignite state-to-state and even international trade wars." *Id.* at 1399.

III. QUESTION 3 VIOLATES THE CONSTITUTION.

A. *NPPC* Recognized Alternative Constitutional Infirmities to State Laws Like Question 3.

Beyond the Commerce Clause, Question 3, and other laws like it, may also conflict with other constitutional provisions such as the Import-Export Clause and the Full Faith and Credit Clause. *See NPPC*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part).

Under the Import-Export Clause, "No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection laws." U.S. Const. art. I, § 10, cl. 2. "The Import-Export Clause was the principal remedy proposed by the Philadelphia Convention to remedy the commercial strife that characterized the relations

among the states under the Articles of Confederation.” Boris I. Bittker & Brannon P. Denning, *The Import-Export Clause*, 68 Miss. L.J. 521, 521 (1998). In particular, the Clause was designed to stop the “exploitation of the inland states by the seaboard states,” which were imposing taxes on arriving goods destined for other states. *Id.* at 522.

This Court should return to the Clause’s original meaning. See *Nat’l Pork Producers Council*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part); *Comptroller of Treasury of Md. v. Wynne*, 575 U.S. 542, 573 (2015) (Scalia, J., dissenting); *Camps Newfound/Owatonna, Inc. v. Town of Harrison*, 520 U.S. 564, 621–637 (1997) (Thomas, J., dissenting); *Brown v. Maryland*, 25 U.S. 419, 438–439, 449 (1827); but see *Woodruff v. Parham*, 75 U.S. 123 (1869) (limiting the Import-Export Clause to foreign trade). That type of return means that discriminatory actions taken by one State to require regulations in another State could require clearing a higher hurdle. Indeed, “not all duties were taxes: Some were imposed not for revenue but merely to regulate (or effectively prohibit) trade in particular articles.” Robert G. Natelson, *What the Constitution Means by “Duties, Imposts, and Excises”—and “Taxes” (Direct or Otherwise)*, 66 Case W. Rev. 297, 320 (2015).

Justices Scalia and Thomas have explained that the Import-Export Clause prevents States “from imposing certain especially burdensome taxes” and duties on imports from other States and not just from foreign countries. *Wynne*, 575 U.S. at 573.

Here, Question 3 conditions the sale of pork on “the use of preferred farming, manufacturing, or production practices in another State” where the pork

originated. *NPPC*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part); *see also Learning Resources, Inc. v. Trump*, 146 S.Ct. 628, 639 (2026). That could be construed as a tax or duty under the original understanding of the Import-Export Clause. Because that may conflict with the Import-Export Clause’s original meaning, the issue warrants reconsideration. *See NPPC*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part).

Question 3 may also violate the Full Faith and Credit Clause, which requires each State to afford “Full Faith and Credit” to the “public Acts” of “every other State.” U.S. Const. art. IV, § 1. It prevents States from “adopting any policy of hostility to the public Acts” of another State. *Carroll v. Lanza*, 349 U.S. 408, 413 (1955). According to Justice Kavanaugh, “[a] State’s effort to regulate farming, manufacturing, and production practices in another State (in a manner different from how that other State’s laws regulate those practices) could in some circumstances raise questions under that Clause.” *NPPC*, 598 U.S. at 408 (Kavanaugh, J., concurring in part and dissenting in part); *see also* Mark D. Rosen, *State Extraterritorial Powers Reconsidered*, 85 *Notre Dame L. Rev.* 1133, 1151-53 (2010); Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 *Colum. L. Rev.* 249, 290, 296–301 (1992).

While the Full Faith and Credit Clause does not have so broad a scope as to encompass any law that has extraterritorial effect, the lower courts can assess whether the Full Faith and Credit Clause is implicated when an agricultural regulation conflicts

with another State's laws about how pork may be produced in that State in the first instance.

Massachusetts created the precise scenario about which Justice Kavanaugh warns. Question 3 regulates pork production in States, like Iowa, in a manner different from how those States regulate pork production. See Elizabeth R. Rumley, *States' Farm Animal Confinement Statutes*, Nat'l Agric. Law Ctr., <https://perma.cc/C9GZ-PZ3U>. Indeed, Question 3 explicitly prohibits certain States from engaging in otherwise legal practices encouraged by those States' laws if they want to sell pork in Massachusetts. Mass. Gen. Laws Ch. 129 App., § 1–3. Thus, the Full Faith and Credit Clause should preclude Massachusetts from enacting its agricultural regulations that conflict with Iowa's laws and that of other top pork-producing states.

B. The Structural Constitution's Extraterritoriality Principle Counsels Against Applying Question 3 to Out-of-State Pork Producers.

Massachusetts's law may also violate the structural constitution's horizontal separation of powers principle. See *NPPC*, 598 U.S. at 376 n.1. Indeed, this Court regularly invalidates state actions that exceed “the usual legislative power of a State to act upon persons and property within the limits of its own territory,” see *id.* at 375 (quoting *Hoyt v. Sprague*, 103 U.S. 613, 630 (1881)).

While some circuit courts have applied those principles through the Dormant Commerce Clause, this Court has also explained that the Full Faith and Credit Clause and Due Process Clause include those

“principles of sovereignty and comity” reflecting the Constitution’s extraterritoriality principle. *See id.* at 376; *Styczinski v. Arnold*, 46 F.4th 907, 913 (2022).

The extraterritoriality principle is one of “many constitutional doctrines that are not spelled out in the Constitution but are nevertheless implicit in its structure and supported by historical practice.” *Franchise Tax Bd. of California v. Hyatt*, 587 U.S. 230, 248 (2019) (regarding State sovereign immunity). For example, the President’s removal power, executive privilege, and executive immunity are all “historically rooted principle[s] embedded in the text and structure of the Constitution.” *Id.* at 248 (citing cases).

The Constitution’s structure gives each State sovereignty equal to every other state. That “fundamental principle of equal sovereignty among the states,” *id.* at 246 (quoting *Shelby County v. Holder*, 570 U.S. 529, 544 (2013)), is at the core of our constitutional design. *See also Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009) (describing “our historic tradition that States enjoy equal sovereignty”) (citation modified).

Accordingly, a State’s equal sovereignty under the Constitution “imply[s] a limitation on the sovereignty of all of its sister States.” *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 293 (1980).

Still further constitutional sections reinforce the Constitution’s horizontal federalism and reflect the inherent territorial limitations on state authority. The requirement that States respect the sovereignty of sister states finds expression throughout the constitution.

The Full Faith and Credit Clause, for example, imposes a “constitutional obligation to enforce the rights and duties validly created under the laws of other states.” *Hughes v. Fetter*, 341 U.S. 609, 611 (1951); U.S. Const. art. IV, § 1 (“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State.”).

The Privileges and Immunities Clause also bars “discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States,” *Toomer v. Witsell*, 334 U.S. 385, 396 (1948), thereby “plac[ing] the citizens of each State upon the same footing with citizens of other States,” *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180 (1868); U.S. Const. art. IV, § 2, cl. 1.

The Extradition Clause implies territorial limits to state power by invoking the concept of a “State having Jurisdiction of the Crime,” U.S. Const., art. IV § 2, cl. 2.

The Sixth Amendment requires that defendants receive a trial “by an impartial jury of the State and district wherein the crime shall have been committed,” U.S. Const. amend. VI, which limits state territorial jurisdiction.

And the Dormant Commerce Clause also policies the proper limits of the Constitution’s horizontal federalism by prohibiting State laws that (i) discriminate against out of state economic interests, in purpose or effect, by benefitting in-state economic interests while burdening out-of-state economic interests, *Oregon Waste Sys., Inc. v. Department of Env’tl. Quality*, 511 U.S. 93, 99 (1994),

(ii) impose burdens on interstate commerce that are “clearly excessive in relation to the putative local benefits,” *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970), or (iii) have the effect of regulating commerce in other States, *Healy*, 491 U.S. at 336.

The extraterritoriality principle is so fundamental and firmly rooted in our constitutional design that it is also found in the jurisprudence of state supreme courts. *Powell v. Khodari-Intergreen Co.*, 334 N.W.2d 127, 131 (Iowa 1983) (“It is a generally recognized principle that a statute of one state has no extraterritorial effect beyond its borders.”); *Rositzky v. Rositzky*, 46 S.W.2d 591, 594 (Mo. 1931) (“[I]t is well to remember that it is the settled law and almost axiomatic that the statutes of a state or country prescribe the law within its boundaries only, and have no extraterritorial force or effect.”).

Here, this Court should find that Massachusetts’ attempt at extraterritorial regulation impermissibly burdens her sister States and hold Question 3 unenforceable as to pork production in those States.

CONCLUSION

This Court should grant *certiorari* to reverse the First Circuit’s judgment.

Respectfully submitted,

BRENNA BIRD
Attorney General
State of Iowa
ERIC WESSAN*
Solicitor General

20

BREANNE STOLTZE
Assistant Solicitor General
(515) 823- 9177
eric.wessan@ag.iowa.gov

March 20, 2025

**Counsel of Record*

APPENDIX

APPENDIX TABLE OF CONTENTS

	Page
Additional Counsel	1a

ADDITIONAL COUNSEL

Steve Marshall
Attorney General of
Alabama

Lynn Fitch
Attorney General of
Mississippi

Stephen J. Cox
Attorney General of
Alaska

Catherine Hanaway
Attorney General of
Missouri

Tim Griffin
Attorney General of
Arkansas

Austin Knudsen
Attorney General of
Montana

James Uthmeier
Attorney General of
Florida

Michael T. Hilgers
Attorney General of
Nebraska

Chris Carr
Attorney General of
Georgia

John Formella
Attorney General of
New Hampshire

Kris Kobach
Attorney General of
Kansas

Drew Wrigley
Attorney General of
North Dakota

Rusell M. Coleman
Attorney General of
Kentucky

Dave Yost
Attorney General of
Ohio

Liz Murrill
Attorney General of
Louisiana

Gentner Drummond
Attorney General of
Oklahoma

Alan Wilson
Attorney General of
South Carolina

Marty Jackley
Attorney General of
South Dakota

Jonathan Skrmetti
Attorney General of
Tennessee

Ken Paxton
Attorney General of
Texas

Derek E. Brown
Attorney General of
Utah

John B. McCuskey
Attorney General of
West Virginia

Keith G. Kautz
Attorney General of
Wyoming