

No. 25-1047

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IN THE  
**Supreme Court of the United States**

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TRIUMPH FOODS, LLC, ET AL.,  
*Petitioners,*

*v.*

ANDREA JOY CAMPBELL, IN HER OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF MASSACHUSETTS, AND  
ASHLEY RANDLE, IN HER OFFICIAL CAPACITY AS  
COMMISSIONER OF THE MASSACHUSETTS DEPARTMENT  
OF AGRICULTURAL RESOURCES,  
*Respondents.*

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On Petition for a Writ of Certiorari to the  
United States Court of Appeals for the First Circuit

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**BRIEF IN OPPOSITION**

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June 1, 2026

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## QUESTIONS PRESENTED

1. Whether the Federal Meat Inspection Act, which regulates the methods of slaughtering pigs and inspection of pork meat sold in interstate commerce, preempts a Massachusetts law that prohibits sales of pork products in Massachusetts that are derived from cruel confinement of breeding pigs on farms, but does not regulate the methods of slaughtering pigs or inspection of pork meat.

2. Whether the same Massachusetts law, which is materially identical to the California law upheld in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), violates the dormant Commerce Clause or other constitutional provisions, where Petitioners allege materially identical burdens on interstate commerce to those alleged in *National Pork*.

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## INTRODUCTION

In 2023, this Court upheld a California law that prevented the sale within California of whole pork meat that is derived from cruel confinement practices. *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023). Now, certain members of the pork industry are trying to revive that challenge by targeting a nearly identical Massachusetts law. This Court rejected one of Petitioners’ claims—under a *Pike* theory of the dormant Commerce Clause, *see Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970)—in *National Pork* only three years ago. The remaining claims, including a claim of preemption under the Federal Meat Inspection Act (“FMIA”), were properly rejected by the First Circuit based on this Court’s settled precedent.

Petitioners do not even attempt to identify any disagreement among the circuit courts of appeals regarding any of their claims. Their assertion of “confusion” among the lower courts rests only on their incorrect claim of error in this very case, and their claims of “national importance” mirror those offered and rejected in *National Pork*. In short, Petitioners seek only error correction. But not only is this an insufficient ground to merit this Court’s review, there was no error below. The First Circuit carefully applied the governing law of this Court in deciding that Petitioners’ claims failed. Certiorari is not warranted.

## STATEMENT

1. In 2016, Massachusetts voters enacted the Massachusetts Prevention of Farm Animal Cruelty Act. Mass. Stat. 2016, ch. 333 (“Question 3”). Question 3’s stated purpose is to “prevent animal cruelty by phasing out extreme methods of farm animal confinement,

which also threaten the health and safety of Massachusetts consumers, increase the risk of foodborne illness, and have negative fiscal impacts on the Commonwealth of Massachusetts.” Mass. Stat. 2016, ch. 333, § 1 (Pet. App. 131a). Question 3 is codified, with subsequent amendments not relevant here, at Mass. Gen. Laws Ann. ch. 129, App. §§ 1-1 – 1-12 (Cum. Supp. 2023) (“the Act”).<sup>1</sup>

As relevant here, the Act prohibits Massachusetts pig farmers from knowingly causing a breeding pig to be confined “in a cruel manner,” defined as confinement “in a manner that prevents the animal from lying down, standing up, fully extending the animal’s limbs or turning around freely.” *Id.* §§ 1-2, 1-5. The Act defines “turning around freely” as “turning in a complete circle without any impediment, including a tether, and without touching the side of an enclosure or another animal.” *Id.* § 1-5. The Act, therefore, prohibits the use of “gestation crates,” which are “stalls so small [breeding pigs] cannot lie down, stand up, or turn around” in them. *National Pork Producers Council v. Ross*, 598 U.S. 356, 363 (2023) (“*National Pork*”). Importantly for present purposes, the Act expressly does not apply to confinement during slaughter, as

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<sup>1</sup> The text of the statute reproduced in the Petitioners’ Appendix was the text of the ballot initiative, as approved by voters, which addressed conditions of confinement for egg-laying hens, breeding pigs, and veal calves. Pet. App. 131a-136a. In 2021, the Massachusetts Legislature made certain changes to the Act’s provisions related primarily to conditions of confinement for egg-laying hens. Mass. Stat. 2021, ch. 108. While the subsections relevant to this Petition were not changed in substance, their numbering was altered. Citations herein are to the amended statute, which is the operative statute.

well as during transportation, exhibitions, or medical research. Mass. Gen. Laws Ann. ch. 129, App. § 1-4.

The Act also prohibits the sale, in Massachusetts, of “[w]hole pork meat that the business owner or operator knows or should know is the meat of a [breeding pig] that was confined in a cruel manner, or is the meat of the immediate offspring of a [breeding pig] that was confined in a cruel manner.” *Id.* § 1-3(C). “Sale” is “a commercial sale by a business that sells any item covered by [§ 1-3]” and “shall be deemed to occur at the location where the buyer takes physical possession of” the item. *Id.* § 1-5.<sup>2</sup>

Under the Act, Massachusetts farmers are subject to the Act’s confinement standard and its sales provision, but out-of-state entities are subject only to the sales provision and then only if they sell pork products in Massachusetts. *Id.* §§ 1-2, 1-3(C); Pet. App. 24a n.12. In the proceedings below, an amicus brief presented data indicating no harm to meat processing companies from a materially identical California law. Pet. App. 23a n.10.

2. In 2018, two years after Massachusetts voters approved Question 3, California voters adopted the virtually identical “Proposition 12,” which “announced new standards for the in-state sale of pork and veal

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<sup>2</sup> As originally enacted, the definition of “sale” excluded “any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act.” Pet. App. 134a; Mass. Gen. Laws Ann. ch. 129, App. § 1-5. As explained *infra*, the district court held that so-called “slaughterhouse exemption” unconstitutional and severed it from the remainder of the Act; no party appealed that aspect of the district court’s decision. Pet. App. 5a-6a n.4.

products.” *National Pork*, 598 U.S. at 365. Like the Act in this case, “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)). Like the Act, Proposition 12 “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 (quoting Cal. Health & Safety Code § 25991(e)(1)).<sup>3</sup>

In 2019, the National Pork Producers Council (“NPPC”), together with the American Farm Bureau Federation, filed suit in the Southern District of California to enjoin Proposition 12. App. to Pet. for Writ of Cert. in No. 21-468, at 147a-233a. This Court granted certiorari to review the Ninth Circuit’s decision rejecting NPPC’s claims. *Nat’l Pork Producers Council v. Ross*, 142 S. Ct. 1413 (2022) (mem.). While that case was pending before this Court, NPPC and others sued in the District of Massachusetts to enjoin Massachusetts’s enforcement of the Act, which NPPC recognized is “materially identical” to Proposition 12. See *Mass. Restaurant Ass’n v. Healey*, No. 22-cv-11245 (D. Mass. Aug. 3, 2022), ECF No. 1 at 2. The parties agreed to stay enforcement of the Act until this Court decided NPPC’s challenge to Proposition 12 in *National Pork*. *Id.*, ECF No. 12 at 2 (Aug. 8, 2022).

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<sup>3</sup> In addition to this definition of “cruel confinement” that mirrors Massachusetts law, California law is stricter in that it further defines “cruel confinement” to also include confining a breeding pig “with less than 24 square feet of usable floorspace per pig.” Cal. Health & Safety Code § 25991(e)(3), whereas the Massachusetts Act has no such square footage requirement.

Following this Court’s affirmance of the Ninth Circuit’s decision, the Act became enforceable within Massachusetts on August 24, 2023, as relevant to Petitioners’ challenge.<sup>4</sup> Pet. App. 3a.

3. Petitioners are entities from outside Massachusetts that raise pigs and that co-own Petitioner Triumph Foods, LLC (“Triumph”), a slaughterhouse that produces pork products in Missouri. Pet. App. 4a, 14a n.5, 43a, 46a. Most of the pigs sold to and processed by Triumph are the immediate offspring of a pig not housed in compliance with the Act. Pet. App. 153a. Nonetheless, Triumph has taken some measures to produce pork compliant with the Act and Triumph’s pork products have been sold into Massachusetts both before and after the Act came into effect. Pet. App. 46a-47a.

It is routine for a slaughterhouse to segregate pigs and pork produced from those pigs. “Producers have used segregation and tracing mechanisms for years to provide consumers with premium pork products that follow organic, non-GMO, specific breeds, and other unique specifications.” Pet. App. 33a, quoting Amicus Br. for Perdue Premium Meat Co., Inc., d/b/a Niman Ranch as Amicus Curiae Supporting Appellees, *Triumph Foods v. Campbell*, No. 24-1759, 2024 WL 4665512, at \*9 (1st Cir. Oct. 28, 2024). For each pig and pork product produced at a slaughterhouse, the United States Department of Agriculture requires the slaughterhouse to keep records of the following: bill of

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<sup>4</sup> The Act’s sales prohibition remains stayed by agreement of the parties in another case only as to sales where the pork products enter and exit Massachusetts for ultimate sale out-of-state. *Mass. Restaurant Ass’n v. Healey*, No. 22-cv-11245 (D. Mass. May 18, 2026), ECF No. 31.

sale, invoices, receiving and shipping papers, descriptions of all livestock, net weight of all livestock, names and addresses of all buyers, method of shipment, names and addresses of carriers, and the contact information for any previous owner of the livestock, as well as serial numbers and identification for each animal. Pet. App. 45a-46a, citing 9 C.F.R. § 320.1(b).

Triumph has over 1,000 product codes for its products, including for specific grocery stores, brands, pork byproducts, and type of pig (“open pen gestation,” “grass-fed,” “premium,” etc.). Pet. App. 46a. To differentiate between different pigs to ensure they are classified with the correct product code, Triumph requires its pig farmers to deliver pigs at specific times; segregates them from other groups of pigs; keeps a count of all pigs in the group; and after processing, maintains the pork meat in separate storage prior to shipment. Pet. App. 46a. Among the differentiated products that it sells, Triumph has made efforts to adjust its business model and structure to allow it to sell products compliant with the Act in Massachusetts. Pet. App. 46a. Triumph estimates it is processing approximately 58,000 pigs per month in compliance with the Act. Pet. App. 46a-47a. Triumph has created a process to differentiate between pork that meets the Act’s requirements and pork that does not, including new product codes, sorting procedures, and storage locations within its facility. Pet. App. 47a. Triumph also sells pork in California that complies with California’s similar law and, at times, has sold pork coded as “Prop 12 Compliant” in Massachusetts. *Triumph Foods v. Campbell*, No. 23-cv-11671, ECF No. 140-9 (Apr. 5, 2024).

4. On July 25, 2023, Petitioners sued to enjoin the Act. They filed an amended complaint on July 31, 2023. Pet. App. 137a-203a. They asserted ten causes of action: (I) dormant Commerce Clause violations by directly discriminating and by unduly burdening interstate commerce; (II) Privileges and Immunities Clause, art. IV, § 2, violations; (III) express preemption under the FMIA; (IV) conflict preemption under the FMIA; (V) preemption under the Packers and Stockyards Act (the “PSA”); (VI) Full Faith and Credit Clause violations; (VII) Due Process Clause violations; (VIII) Import-Export Clause violations; (IX) declaratory relief on unconstitutionality; and (X) judicial review of the Massachusetts Act’s regulations under state law. Pet. App. 4a, 173a-201a. The allegations in Petitioners’ complaint closely mirrored those in the complaint that had been dismissed in *National Pork*. See *Triumph Foods v. Campbell*, No. 24-1759 (1st Cir.), Appellees’ Brief at 22-24, 51 (comparing complaints).

The district court consolidated Petitioners’ request for a preliminary injunction with a trial on the merits, pursuant to Federal Rule of Civil Procedure 65(a)(1). Pet. App. 5a. Respondents moved to dismiss the complaint. *Id.* The district court granted Respondents’ motion to dismiss as to all claims, except for the dormant Commerce Clause claim (Count I). *Id.*

Petitioners filed a motion for partial summary judgment, which focused on direct discrimination under Count I. Pet. App. 5a. Respondents opposed that motion and requested that the district court enter summary judgment sua sponte not only on Petitioners’ discrimination theory, but also on their alternative *Pike* “undue burden” theory, for the same reasons

Respondents had consistently argued: this Court’s decision in *National Pork* foreclosed it. Pet. App. 5a, 66a-68a. After a hearing, the district court concluded that “the slaughterhouse exemption” provision of the Act, which formed the basis for Triumph’s “direct discrimination” theory, violated the dormant Commerce Clause; severed that exemption from the Act; and entered summary judgment for Respondents on the remainder of Count I, *i.e.*, both the pig farmers’ “direct discrimination” theory and any theory under *Pike*. Pet. App. 5a-6a.<sup>5</sup>

Thereafter, the district court vacated its prior dismissal of Triumph’s preemption claims under the FMIA (Counts III and IV) and held further proceedings. Pet. App. 75a. After a hearing on cross-motions for summary judgment on those claims, the district court held that the Act is not preempted by the FMIA and entered summary judgment on Counts III and IV. Pet. App. 6a.

5. On appeal, Petitioners asserted a variety of procedural and substantive errors. Pet. App. 7a, 13a. The First Circuit affirmed the district court in all respects as to the disposition of Counts I-VIII.<sup>6</sup> Pet. App. 7a-38a. Before this Court, the petition for certiorari does not raise, and therefore waives, both the procedural

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<sup>5</sup> The severance of the “slaughterhouse exemption”—which had previously excluded from the definition of “sale” “any sale undertaken at an establishment at which inspection is provided under the Federal Meat Inspection Act”—was not appealed to the First Circuit, Pet. App. 134a n.4, and is not addressed in the Petition.

<sup>6</sup> The First Circuit deemed waived on appeal Petitioners’ arguments regarding Counts IX and X for failure to adequately develop them. Pet. App. 34a n.14. Petitioners do not attempt to revive those claims here.

error claims and the PSA preemption claim, and so this brief does not further address those claims. *See generally* Pet. 18-34.

The First Circuit rejected the FMIA claims. Pet. App. 29a-33a. Petitioners relied on *National Meat Association v. Harris*, 565 U.S. 452 (2012), for their express preemption argument, but the First Circuit distinguished *National Meat*, concluding that “[t]he California Act at issue in *National Meat* is fundamentally different than the Massachusetts Act.” Pet. App. 32a. The First Circuit explained that the Massachusetts Act “only bans the sale of noncompliant pork meat; it does not regulate how a slaughterhouse operates.” Pet. App. 32a (citation and internal quotation marks omitted). The court pointed out that “Plaintiffs do not identify any operational requirement in the Massachusetts Act, nor could they. And the FMIA’s express preemption provision applies only to ‘[r]equirements within the scope of [the FMIA].’” Pet. App. 32a (quoting 21 U.S.C. § 678). In contrast, the court noted that the California law challenged in *National Meat* had a provision “in direct contention with the FMIA’s proscriptions,” namely, a provision purporting to forbid slaughterhouses in California from processing, butchering, or selling meat from non-ambulatory animals for human consumption. Pet. App. 32a (citing *National Meat*, 565 U.S. at 459). The First Circuit also noted that this Court “expressly disavowed that [*National Meat*’s] holding means what Plaintiffs now say it means.” Pet. App. 32a.

“In short,” the First Circuit concluded, “unlike [the] *National Meat* California Act, the Massachusetts Act regulates pork production, rather than pork inspection. The FMIA regulates only the latter....” Pet.

App. 33a. The First Circuit also noted this Court’s observation that “Congress has yet to adopt any statute that might displace . . . laws regulating pork production[.]” Pet. App. 33a (quoting *National Pork*, 598 U.S. at 368).

Further, the First Circuit concluded that the Act does not create a “class of adulteration unrecognized in [the FMIA]” simply because the Act regulates an upstream activity within the state’s authority. Pet. App. 33a (citing *Va. Uranium, Inc. v. Warren*, 587 U.S. 761, 790-91 (2019) (Ginsburg, J., concurring)). The First Circuit also cited to an amicus brief from an industry actor that noted, “Producers have used segregation and tracing mechanisms for years to provide consumers with premium pork products that follow organic, non-GMO, specific breeds, and other unique specifications.” Pet. App. 33a.

As for the FMIA conflict preemption claim, the First Circuit found that the Act “does not ‘render it impossible to comply with the [FMIA], nor serve as an obstacle to its purposes and objectives.’” Pet. App. 33a (quoting *Iowa Pork Producers Ass’n v. Bonta*, No. 22-55336, 2024 WL 3158532, at \*5 (9th Cir. June 25, 2024), *cert. denied*, 145 S.Ct. 2866 (2025)).

On the dormant Commerce Clause claim, the First Circuit held that “the district court did not err in finding insufficient evidence of discriminatory effect and of discriminatory purpose,” with the slaughterhouse exemption severed. Pet. App. 16a. The First Circuit also reasoned that Petitioners’ effects-based discrimination claim was defeated by *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 119-20 (1978). Pet. App. 20a (“Plaintiffs’ arguments on this point are no different than those the Court squarely rejected in *Exxon*

over 40 years ago.”). Turning to the *Pike* theory, the First Circuit viewed Petitioners’ allegations as materially indistinguishable from the allegations considered in *National Pork* and therefore held that the *National Pork* holding is dispositive of the *Pike* theory. Pet. App. 24a-28a.

The First Circuit also rejected Petitioners’ other constitutional claims under the Privileges and Immunities Clause, the Full Faith and Credit Clause, the Due Process Clause, and the Import-Export Clause. Pet. App. 13a-14a, 35a-38a.

Accordingly, the First Circuit affirmed the district court’s judgment. Pet. App. 38a.

#### **REASONS FOR DENYING THE PETITION**

First, this petition should be denied because Petitioners have not identified any conflict of authority among the lower courts regarding their claims under the FMIA, the dormant Commerce Clause, or other constitutional provisions. *See* Sup. Ct. R. 10(a).

Second, this case presents no opportunity to clarify the state of the law regarding *Pike* claims under the dormant Commerce Clause because it is factually nearly identical to *National Pork*, decided only three years ago. Moreover, although that opinion was fractured, the lower courts may reach consensus on how to approach future *Pike* claims without this Court’s intervention so soon after it decided *National Pork*. Further percolation is therefore warranted.

Third, although this Petition hinges on a request for error correction, there was no error below. The First Circuit carefully applied this Court’s precedent to the claims before it and correctly concluded that Petitioners’ claims failed.

**I. There Is No Conflict of Authority as to Any Question Presented.**

This Petition presents a classic request for error correction. Petitioners have not even attempted to argue there is any disagreement among the circuits as to any question presented, nor could they. Nor have they argued that the First Circuit’s decision conflicts with a decision of a state court of last resort. Instead, Petitioners’ asserted reasons to grant certiorari boil down to disagreements about how the First Circuit applied this Court’s precedents. Their arguments about the purported misapplication of settled law do not warrant certiorari (and are wrong in any event). *See* Sup. Ct. R. 10 (petition that seeks mere error correction is “rarely granted”).

**A. There Is No “Confusion” Regarding the Holding of *National Pork*.**

Petitioners purport to identify “confusion” among the “lower courts” regarding how to apply this Court’s decision in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023), to *Pike* claims. Pet. 23. However, they cite primarily to the district court and First Circuit decisions in this very case as evidence of such purported “confusion.” Pet. 23-24. The only other case they cite—the non-precedential decision in *Iowa Pork Producers Ass’n v. Bonta*, No. 22-55336, 2024 WL 3158532 (9th Cir. June 25, 2024), *cert. denied*, 145 S. Ct. 2866 (2025) (“*IPPA*”)—is consistent with the First Circuit’s decision below and presented a similarly narrow question.

In both *IPPA* and this case, the law at issue was either the same as (for *IPPA*, which involved California’s Proposition 12), or materially identical to (for the

First Circuit’s decision below regarding the Massachusetts Act), the law challenged in *National Pork*. And in both cases, the circuit courts considered a nearly identical challenge as the one made in *National Pork* under a “*Pike* theory” of the dormant Commerce Clause. Petitioners now claim that the *National Pork* complaint contained “far-less detailed factual allegations” than Petitioners’ own complaint, Pet. 24, but that is incorrect. As described in Respondents’ brief to the First Circuit, the complaints closely mirrored one another in all respects material to this Court’s decision in *National Pork*. See *Triumph Foods v. Campbell*, No. 24-1759 (1st Cir.), Appellees’ Brief at 22-24, 51.

As a result, neither the First Circuit in this case nor the Ninth Circuit in *IPPA* had to grapple with how to apply the principles derived from *National Pork* regarding *Pike* claims to a new factual context. Instead, because the factual contexts before the First and Ninth Circuits were the same as in *National Pork*, each court found that *National Pork*’s result directly controlled. See Pet. App. 28a (“The benefits and burdens [Petitioners] point to here are indistinguishable from those alleged in *National Pork*[.]”); *IPPA*, 2024 WL 3158532, at \*3 (“[O]nly the result in *National Pork II* is binding[.]”)

As discussed further below, any confusion or disagreement among lower courts about how to apply *National Pork* to future *Pike* claims in novel factual scenarios should await those future cases. There is no confusion about how to apply *National Pork* in the narrow circumstance presented here, where Petitioners are raising a materially identical challenge to a materially identical law.

**B. There Is No Conflict as to Any of Petitioners' Other Claims.**

As to their remaining claims, Petitioners do not identify any conflict of authority – nor could they, as there is none.

As to both express and conflict preemption under the Federal Meat Inspection Act, Petitioners have not identified any divergence in how circuit courts are applying that statute's preemption clause and its interpretation in *National Meat Association v. Harris*, 565 U.S. 452 (2012). *See* Pet. 18-23 (discussing *National Meat* with no citation to any circuit-level authority); Pet. 26-30 (same).

As discussed further below, this is unsurprising because the circuit courts are in agreement about the line demarcating laws that do not implicate the FMIA's preemption clause (or those in similar statutes like the Poultry Products Inspection Act ("PPIA")) and those laws that are preempted. Namely, laws that incentivize certain methods of *farm production*—as opposed to methods of *slaughter*—are not within the scope of the FMIA and PPIA and are not preempted by those statutes. *See, e.g., Ass'n des Éleveurs de Canards et d'Oies du Quebec v. Bonta*, 33 F.4th 1107 (9th Cir. 2022). Petitioners have identified no circuit court decision to the contrary.

Similarly, as to Petitioners' remaining claims, they do not cite any circuit-level authority at all, let alone any authority that is contrary to the First Circuit's decision on any of those claims. *See* Pet. 31-34.

## **II. This Case Presents No Important Question of Federal Law That Merits This Court's Review.**

Petitioners have not shown that this case presents an important question of federal law that merits review by this Court. *See* Sup. Ct. R. 10(c). Their hyperbole that the Petition presents “[o]verwhelmingly [i]mportant [i]ssues,” Pet. 25, is supported by neither the facts nor the law.

As stated above, Petitioners here challenge a law that is materially identical to the California law recently upheld in *National Pork*. The sales bans in California’s Proposition 12 and the Massachusetts Act share nearly identical language, both in terms of housing standards and in-state sales prohibitions.

As a result, this case does not provide an opportunity for this Court to clarify the reasoning and holdings in *National Pork* related to how *Pike* claims should be analyzed going forward, nor does it present an opportunity to address Petitioners’ “important issue[]” of “attempt[s] by individual states to legislate over one another.” Pet. 25. The only question actually presented as to Petitioners’ *Pike* theory is whether *National Pork* squarely forecloses that theory of a dormant Commerce Clause violation under the facts of this case. It does, as the First Circuit correctly concluded. *See infra* Part III-B.

As the lower courts are presented with new *Pike*-based dormant Commerce Clause challenges, they will inevitably address the issue of how to address *Pike* claims in light of *National Pork*. Further percolation among the lower courts may yield entirely con-

sistent understandings that do not require any further clarification from this Court. If it does not, the Court will have an opportunity to address these questions with the benefit of greater development in the law. But there is no basis to grant certiorari here, where the facts of the case present precisely the same *Pike*-based claim that this Court recently rejected in *National Pork*.

This Court already rejected Petitioners' contention that a law like the one at issue here is "precisely what the dormant Commerce Clause prevents." Pet. 25. Faced with California's nearly identical Proposition 12, this Court wrote that, "[w]hile the Constitution addresses many weighty issues, the type of pork chops California merchants may sell is not on that list." *National Pork*, 598 U.S. at 364. Petitioners' arguments about the legal and practical implications of its dormant Commerce Clause claim, Pet. 25, were before the Court in *National Pork* and were found not to create a constitutional violation. *Compare, e.g.*, 598 U.S. at 390-391, *with, e.g., id.* at 407 (Kavanaugh, J., concurring in part and dissenting in part). Petitioners do not identify any intervening developments that would justify revisiting that conclusion here.

Nor does Petitioners' discrimination-based theory merit this Court's intervention. This Court has twice denied certiorari on nearly identical discrimination-based dormant Commerce Clause challenges to California's Proposition 12. *See* Pet. for Writ of Cert. at 15-16, 28-29, *Iowa Pork Producers Ass'n v. Bonta*, No. 24-728 (Jan. 3, 2025), *cert. denied* 145 S.Ct. 2866 (2025); Pet. for Writ of Cert. at 22-27, *N. Am. Meat Inst. v. Bonta*, No. 20-1215 (June 28, 2021), *cert. denied*, 141 S. Ct. 2854 (2021). Petitioners do 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—including the First Circuit—about the legal standards governing discrimination claims under the dormant Commerce Clause.<sup>7</sup>

Moreover, although the law at issue here went into effect in August 2023, Petitioners have provided no evidence to support the dire predictions within their complaint of “enormous costs on pork farmers,” Pet. App. 152a, “increased costs to consumers,” Pet. App. 189a, and “reduc[ed] ... supply of Pork Meat,” *id.*, within Massachusetts or anywhere else. Indeed, an amicus submission from within the pork industry explained to the First Circuit that “humane care standards are financially viable at scale.” Amicus Br. for Perdue Premium Meat Co., 2024 WL 4665512, at \*8. *See also supra* at pp.5-6 (describing the pork industry’s demonstrated ability to comply with humane

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<sup>7</sup> Compare *Cherry Hill Vineyard, LLC v. Baldacci*, 505 F.3d 28, 33 (1st Cir. 2007) (“[A] state regulation that discriminates against interstate commerce on its face, in purpose, or in effect . . . will be sustained only when it promotes a legitimate state interest that cannot be achieved through any reasonable nondiscriminatory alternative.”) with, 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”: (1) “on its face,” (2) “by harboring a discriminatory purpose,” or (3) “in its effect”); *NextEra Energy Cap. Holdings, Inc. v. Lake*, 48 F.4th 306, 321 (5th Cir. 2022) (same); *Energy Mich., Inc. v. Mich. Pub. Serv. Comm’n*, 126 F.4th 476, 487 (6th Cir. 2025) (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).

treatment requirements, as well as organic, non-GMO, and other specifications for pork meat).

Finally, Petitioners' FMIA preemption claims, *see* Pet. 25-26, present ordinary statutory interpretation issues as to which no conflict exists, either among the lower courts or with this Court's precedent, and Petitioners barely argue their remaining constitutional claims, Pet. 31-34, which in any event are meritless, *see infra* Part III-C. Accordingly, the petition affords no opportunity to clarify or develop important questions of constitutional doctrine.

### **III. The First Circuit's Decision Was Correct.**

The First Circuit did not err in any respect. That court correctly concluded that Respondents were entitled to summary judgment on both the FMIA and dormant Commerce Clause claims based on the application of settled Supreme Court precedent to the factual record before the district court. And the First Circuit correctly dismissed Petitioners' other claims.

#### **A. The First Circuit Correctly Concluded that the FMIA Does Not Preempt the Act.**

In *National Pork*, this Court observed that “[d]espite the persistent efforts of certain pork producers, Congress has yet to adopt any statute that might displace [California’s] Proposition 12 or laws regulating pork production in other states.” *National Pork*, 598 U.S. at 368. The legislative landscape has not changed since that time. Unsurprisingly, then, the First Circuit concluded that the Act is not preempted by the FMIA, either expressly or by conflict. Pet. App. 33a. In both respects, its conclusions were correct.

**1. Petitioners – Not the First Circuit –  
Misread *National Meat Association v.  
Harris*.**

The First Circuit carefully considered and correctly rejected Petitioners’ express preemption theory, which relies on a misreading of *National Meat* and on ignoring the FMIA’s statutory language that any state law’s “requirements” must be “within the scope” of the FMIA to be preempted. Pet. i (erroneously defining the question presented as only whether the Act “imposes additional or different—even if non-conflicting—requirements” on “pork producers”), Pet. App. 29a-33a. This Court emphasized in *National Meat* that FMIA preemption “prevents a State from imposing any additional or different—even if non-conflicting—requirements that [1] fall within the scope of the Act and [2] concern a slaughterhouse’s facilities or operations.” 565 U.S. at 459-60 (emphasis and numbering added). The First Circuit correctly concluded that, far from supporting Petitioners’ FMIA preemption claim, “the Supreme Court in *National Meat* expressly disavowed that its holding means what [Petitioners] now say it means.” Pet. App. 32a (citing *National Meat*, 565 U.S. at 462-63).

The FMIA, 21 U.S.C. §§ 601, *et seq.*, first enacted in 1906 in response to concerns about unsanitary conditions at meat-packing establishments, advances “dual goals of safe meat and humane slaughter” by regulating certain “activities at slaughterhouses.” *National Meat*, 565 U.S. at 455. Specifically, the FMIA prescribes a federal meat-inspection regime that requires (1) ante-mortem (pre-slaughter) inspection before animals are permitted to enter into a slaughterhouse and (2) post-mortem (post-slaughter) inspection

of carcasses or parts thereof, to examine whether the animals or their meat, respectively, show signs of adulteration.<sup>8</sup> 21 U.S.C. §§ 603, 604. The FMIA also requires slaughterhouses to use humane methods of handling and slaughter. *Id.* § 603(b).

The U.S. Department of Agriculture’s Food Safety and Inspection Service (“FSIS”) administers the FMIA and has issued regulations to implement its inspection system and humane handling requirements. 9 C.F.R. §§ 300.1 *et seq.*; *National Meat*, 565 U.S. at 456. Those regulations apply when “a truck carrying livestock ‘enters, or is in line to enter,’ a slaughterhouse’s premises,” *National Meat*, 565 U.S. at 457, but not before that point. *See also* FSIS Directive 6900.2, ch. II, § I (Sept. 24, 2020).

The FMIA contains a preemption clause, which provides:

Requirements within the scope of [the FMIA] with respect to premises, facilities and operations of any establishment at which inspection is provided under [the FMIA], which are in addition to, or different than those made under [the FMIA] may not be imposed by any State [. . .] except that any such jurisdiction

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<sup>8</sup> The FMIA defines “adulterated” meat to include that which contains “any poisonous or deleterious substance” which may be “injurious to health” or which render it “unfit for human food”; if it consists “of any filthy, putrid, or decomposed substance,” or if it is otherwise “unsound, unhealthful, unwholesome, or otherwise unfit for human food.” 21 U.S.C. § 601(m). That definition has been incorporated in substantial part into FSIS regulation. *See* 9 C.F.R. § 301.2.

may impose recordkeeping and other requirements within the scope of [21 U.S.C. § 642], if consistent therewith, with respect to any such establishment.

21 U.S.C. § 678. Pet. App. 123a-124a.

The provision also includes a savings clause, which provides that the FMIA “shall not preclude” a State “from making requirement[s] or taking other action, consistent with [the FMIA], with respect to any other matters regulated under [the FMIA].” *Id.*

In *National Meat*, this Court considered a California law that prohibited any “slaughterhouse” from (1) “buy[ing], sell[ing] or receiv[ing]” a nonambulatory animal”; (2) “hold[ing] a nonambulatory animal without taking immediate action to humanely euthanize” it; and (3) “process[ing]” or “butcher[ing]” a nonambulatory animal. 565 U.S. at 459. To “implement and enforce these provisions,” the California law also included a parallel sales ban, which prohibited a slaughterhouse from “sell[ing] meat or products of nonambulatory animals for human consumption.” *Id.* The Court observed that the California law’s substantive directives contradicted FSIS regulations, which prescribed the steps that slaughterhouses had to take with respect to nonambulatory animals, and thereby “compel[led]” slaughterhouses “to deal with nonambulatory pigs on their premises in ways that” the FMIA and on-point FSIS regulations did not. *Id.* at 461-62. Accordingly, this Court had little difficulty in unanimously concluding that the California law “imposes additional or different requirements on swine slaughterhouses” than does the FMIA, and that those “requirements” were “within—and indeed at the very

heart of—the FMIA’s scope.” *Id.* at 460, 467. The inevitable conclusion was that the FMIA “expressly preempt[ed]” California’s law. *Id.* at 468.

As to the sales ban, this Court concluded that it likewise was impermissible because the way it operated within the statute “as a whole” was to “implement and enforce each of the section’s other regulations” on slaughterhouses: “its prohibitions of receipt and purchase, its bar on butchering and processing, and its mandate of immediate euthanasia.” *Id.* at 463-64. For that reason, the sales ban functioned as a “command” to slaughterhouses to structure their operations “in the exact way *the remainder* of [the California law] mandate[d].” *Id.* at 464 (emphasis added). The Court cited with approval, however, the position of the United States that the FMIA “does not usually foreclose ‘state regulation of the commercial sales activities of slaughterhouses’” or “state laws of general application (workplace safety regulations, building codes, etc.).” *Id.* at 463, 467 n.10.

The First Circuit carefully applied this Court’s analysis and holding in *National Meat* in concluding that the Act is “fundamentally different” from the California law at issue in that case, and that Petitioners failed to identify any requirement the Act imposes that is “within the scope” of the FMIA. Pet. App. 32a.

Starting with the Act’s substantive prohibitions, the Act prohibits pig farmers (referred to in the trade as “producers”) within Massachusetts from knowingly causing a breeding pig (sow) to be confined “in a cruel manner,” *i.e.*, in a way that prevents the sow from “lying down, standing up, fully extending” her limbs, or “turning around freely.” Mass. Gen. Laws Ann. ch. 129, App. §§ 1-2, 1-5. By definition, pigs are not

“confined in a cruel manner” during either transport or slaughter. *Id.* § 1-4. This prohibition, then, plainly applies to pig farmers, not slaughterhouses. And, because the FMIA has nothing to say about pig farming practices other than those concerning transport and slaughter, regulation of such practices is not “within the scope of [the FMIA].” *See* 21 U.S.C. § 678. The Act likewise does not conflict with any FSIS regulation, because the FSIS regulates slaughterhouses, not pig farms.

The same is true of the Act’s sales ban. It prohibits the sale in Massachusetts of “whole pork meat” (as defined by the statute) that a business “knows or should know” is the meat of a cruelly confined breeding pig, or her immediate offspring. Mass. Gen. Laws Ann. ch. 129, App. § 1-3(C). The sales ban thus acts as an inducement to *pig farmers* to adapt their confinement practices. But unlike in *National Meat*, the Act’s sales ban does not implement or enforce any substantive prohibitions *as to slaughterhouses*, nor could it “function[] as a command” to slaughterhouses to do anything at all. 565 U.S. at 464. The Act merely requires that any pork meat sold in Massachusetts be the product of sows (or their offspring) that are not cruelly confined at pig farms. That is why Petitioners failed, in the First Circuit’s correct view, to identify “any operational requirements” imposed by the Act that were “within the scope” of the FMIA. Pet. App. 32a.

The First Circuit’s conclusion, therefore, that the Act does not regulate pork inspection or slaughter is plainly correct. Pet. App. 33a. As it noted, this Court in *National Meat* had itself acknowledged that a state law that applies “beyond the slaughterhouse gate”

would fall outside the FMIA’s preemptive scope. Pet. App. 32a (quoting *National Meat*, 565 U.S. at 462).

Moreover, the First Circuit’s conclusion accords with those of other circuit courts of appeal which have recognized that sales bans that “work[] at a remove from the sites and activities the FMIA most directly governs,” *National Meat*, 565 U.S. at 467, are not preempted. See, e.g., *Ass’n des Éleveurs*, 33 F.4th at 1112 (upholding state law banning force-fed foie gras); cf. *Cavel Int’l, Inc. v. Madigan*, 500 F.3d 551 (7th Cir. 2007), cert denied, 554 U.S. 902 (2008) (upholding state ban on horse meat); *Empacadora de Carnes de Fresnillo, S.A. de C.V., v. Curry*, 476 F.3d 326 (5th Cir. 2007) (same). “[M]ethods of farm production” like those the Act addresses, as opposed to the “methods of slaughter” at issue in *National Meat*, are simply outside of the FMIA’s scope. See *Ass’n des Éleveurs*, 33 F.4th at 1115. The sales ban here instead falls under the general rule that “state regulation of the commercial sales activities of slaughterhouses” is outside the FMIA’s preemptive scope and, unlike the law at issue in *National Meat*, is not an end-run around the FMIA’s substantive requirements. See *National Meat*, 565 U.S. at 463.

Unable to find refuge in the preemption clause’s text or in *National Meat*, Petitioners cite sundry operational adjustments they claim to have made in response to the Act. Pet. 28.<sup>9</sup> It bears noting at the outset that none of these specific operational choices are,

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<sup>9</sup> Petitioners offhandedly assert—apparently, on behalf of “processors” generally—that they “are now forced to essentially operate three production lines—one for Massachusetts, one for California, and one for the rest of the country[.]” Pet. 22. The record

in fact, required by the Act—which, again, is substantively addressed to methods of pig farming. Nor are those choices within the “scope” of Triumph’s FMIA compliance—they are instead part and parcel of Triumph’s inventory management for business purposes. Indeed, the record below discloses that Triumph maintains over 1,000 product codes to identify specific cuts of meat and byproducts to dispatch their products to customers in an orderly manner. Pet. App. 46a. Nor is Triumph alone: pork producers have used similar tracing practices “for years.” Pet. App. 33a. Incidental effects on these kinds of commercial sales activities are outside the FMIA’s scope and therefore “not usually foreclose[d]” by it. *See National Meat*, 565 U.S. at 463. If instead, as Petitioners urge, the FMIA were to preempt any state law that gave rise to incidental effects on a slaughterhouse’s commercial sales operations, the preemption provision would swallow its own savings clause and prohibit virtually any state law of general applicability. *But see id.* at 467 n.10. For example, a “workplace safety regulation[],” *id.*, will inevitably require a slaughterhouse to undertake certain measures within its facility that affect its operations. And yet the FMIA does not preempt such state laws because those measures would be outside the

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contradicts that assertion. Instead, the record discloses that Triumph shipped pork into Massachusetts that it identified not as “Massachusetts compliant” but rather “Prop-12 Compliant” – *i.e.*, pork that met the California law’s more stringent standard, which includes a minimum square-footage requirement. *Triumph Foods v. Campbell*, No. 23-cv-11671, ECF No. 140-9 (Apr. 5, 2024). The record therefore suggests that Petitioners did what any rational economic actor would do: met the stricter standard of one jurisdiction (California) and shipped that product to the jurisdiction with a less strict standard (Massachusetts).

“scope” of the FMIA’s “dual goals of safe meat and humane slaughter.” *Id.* at 456. So too here. *See* Pet. App. 33a (“In short, unlike [the] *National Meat* California Act, the Massachusetts Act regulates pork production, rather than pork inspection.”)

The First Circuit did not err in concluding that the FMIA does not expressly preempt the Act and faithfully applied the distinctions drawn in *National Meat* regarding the FMIA’s preemptive scope.

## **2. The First Circuit Also Correctly Rejected Petitioners’ Conflict Preemption Claim.**

The First Circuit also correctly rejected Petitioners’ theory that the Act must yield to the FMIA under the theory of conflict preemption. Pet. App. 33a. Petitioners assert that the Act creates a “class of adulteration unrecognized” in the FMIA, which conflicts with USDA determinations whether meat is fit for human consumption. Pet. 29-30. But the Act does not supplant the USDA’s fitness determinations; a pig raised in a compliant manner could just as easily fail inspection as pass it. *See* 21 U.S.C. § 601(m).

Nor does the Act, as the First Circuit found, “render it impossible to comply with the [FMIA], nor serve as an obstacle to its purposes and objectives.” Pet. App. 33a. Petitioners do not suggest here that it is “impossible” to comply with both the FMIA and the Act, and for good reason: the record below is clear that they have been complying with both since the Act went into effect. *E.g.*, Pet. App. 47a (noting Triumph estimates it is processing “about 700,000 compliant pigs (or 70 million pounds) per year” that are compliant with the Act’s sales requirements).

The First Circuit was thus correct to conclude that the Act is not conflict-preempted by the FMIA.

**B. The First Circuit Correctly Concluded  
Petitioners Had Not Demonstrated a  
Dormant Commerce Clause Violation.**

Petitioners asserted two theories of a dormant Commerce Clause violation: (1) discrimination against out-of-state pig farmers, and (2) imposition of an undue burden on interstate commerce under *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). The First Circuit correctly affirmed the district court’s rejection of both theories. Pet. App. 14a-28a.

**1. Petitioners’ Discrimination Theory is  
Foreclosed by Longstanding Prece-  
dent from this Court.**

As the First Circuit correctly concluded, Pet. App. 14a-24a, Petitioners’ theory of discrimination under the dormant Commerce Clause is foreclosed by this Court’s decision in *Exxon v. Governor of Maryland*, 437 U.S. 117 (1978).

The “very core” of the dormant Commerce Clause is an “antidiscrimination principle” that prohibits state laws “driven by economic protectionism.” *National Pork*, 598 U.S. at 369-70 (citation and quotations omitted). This Court has long held, however, that “the fact that the burden of the [state] requirements falls solely on interstate companies . . . does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce[.]” *Exxon*, 437 U.S. at 125. That principle defeats Petitioners’ discrimination claim.

As described above, n.7, when analyzing claims of discrimination against interstate commerce, the circuit courts examine state laws to determine whether they discriminate (1) on their face, (2) in purpose, or (3) in effect. *See, e.g., Cherry Hill*, 505 F.3d at 33. Here, as the First Circuit noted, Petitioners do not claim that the Act discriminates on its face. Pet. App. 15a n.6. Nor could they, as the Act’s regulation of farming practices applies only to Massachusetts farmers, *see* Mass. Gen. Laws Ann. ch. 129, App. § 1-2 (banning “cruel” farming practices “within the Commonwealth of Massachusetts”), and its sales ban applies equally to in-state and out-of-state pork. *Id.* § 1-3(C).

The First Circuit also correctly held that Petitioners had not adequately demonstrated either discriminatory purpose or effect. Pet. App. 16a-24a. As to purpose, the First Circuit correctly observed that nothing in the record disclosed a purpose of “supporting in-state farmers to the detriment of out-of-state-farmers.” Pet. App. 17a. Instead, the Act’s purpose was to address animal cruelty. Pet. App. 17a. That purpose is plain from the text of the Act, *see* Mass. Gen. Laws Ann. ch. 129, App. § 1-1 (“The purpose of this Act is to prevent animal cruelty by phasing out extreme methods of farm animal confinement...”), and the First Circuit correctly concluded that Petitioners’ effort to show an impermissibly discriminatory purpose by looking to a few stray comments from legislators—especially as to a law that was enacted by popular initiative rather than by the Legislature—fell far short of carrying their burden. Pet. App. 16a-17a (noting that “none of these comments make reference to supporting in-state farmers to the detriment of out-of-state farmers”). Indeed, Petitioners appear to have aban-

doned any claim that the Act is impermissibly discriminatory in purpose, as the Petition's brief discussion of discrimination makes no mention of purportedly unlawful purpose and does not reference any evidence that could support such a claim. *See* Pet. 30. Accordingly, the issue is forfeited, and in any event it is meritless for the reasons stated by the First Circuit.

As to effects, the First Circuit correctly concluded that this Court's decision in *Exxon* "defeats [Petitioners]' claim." Pet. App. 19a. In *Exxon*, this Court rejected a dormant Commerce Clause challenge to a Maryland law that prohibited oil producers or refiners from also owning gas stations in Maryland. *See* 437 U.S. at 119-20. The plaintiffs there, out-of-state oil producers who also owned gas stations, argued that because no oil producers or refiners were located in Maryland, "the burden of the divestiture requirements falls solely on interstate companies." *Id.* at 125. This Court squarely rejected that such a showing demonstrated a dormant Commerce Clause violation, concluding that "this fact does not lead, either logically or as a practical matter, to a conclusion that the State is discriminating against interstate commerce[.]" *Id.* Further elaborating, the Court explained that "[t]he fact that the burden of a state regulation falls on some interstate companies does not, by itself, establish a claim of discrimination against interstate commerce." *Id.* at 126.

Just so here, where the *only* fact on which Petitioners relied to show a purportedly discriminatory effect was that "no Massachusetts farmers used gestation crates" at the time the Act passed. Pet. App. 18a. The First Circuit correctly rejected that theory as "no different than th[e one] the

[Supreme] Court squarely rejected in *Exxon* over 40 years ago.” Pet. App. 20a. As in that case, although the only businesses practically affected by the Massachusetts Act are located out of state, the Act does not distinguish between in- and out-of-state businesses in the burden that it imposes. Pet. App. 19a-20a. Absent any evidence of actual “competitive advantage,” accorded to in-state businesses, the mere fact that a statute’s requirements fall solely on interstate companies does not implicate the sort of economic protectionism that the dormant Commerce Clause is designed to prevent. Pet. App. 20a (citing *Exxon*, 437 U.S. at 126). And the First Circuit highlighted that not only did the record fail to disclose evidence of any such competitive advantage, but Massachusetts pork production actually “decreased from 2021 to 2022.” Pet. App. 23a. The First Circuit also cited an amicus brief by “another major pork producer” noting that California’s similar law had not “harm[ed] . . . operations” for major out-of-state-pork producers. Pet. App. 23a n.10.

Thus, in rejecting Petitioners’ claim of discriminatory effects, the First Circuit correctly applied this Court’s settled law from *Exxon* to the facts of this case.

## **2. Petitioners’ *Pike* Theory is Foreclosed by *National Pork*.**

A majority of this Court in *National Pork* affirmed the Rule 12(b)(6) dismissal of a *Pike* challenge to Proposition 12, California’s materially identical state law. Even though the majority was unable to agree on a rationale for why Proposition 12 survives under the *Pike* doctrine, the result directly controls, and it de-

feats Petitioners’ *Pike* claim. Even in the case of summary affirmances and dismissals with no reasoning at all, the *results* of this Court’s cases are binding where the issues are “sufficiently the same.” *Hicks v. Miranda*, 422 U.S. 332, 346 n.14 (1975); *see also, e.g., Mandel v. Bradley*, 432 U.S. 173, 176 (1977); *King v. Palmer*, 950 F.2d 771, 783-84 (D.C. Cir. 1991) (en banc); *Ballinger v. City of Oakland*, 24 F.4th 1287, 1295 (9th Cir. 2022). Because Petitioners’ *Pike* claim is indistinguishable from the one in *National Pork*, *see, e.g., Pet. App. 28a* (“The benefits and burdens [Petitioners] point to here are indistinguishable from those alleged in *National Pork...*”), the result in *National Pork* dictates the failure of the *Pike* claim 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).

Petitioners cannot seriously contend that their *Pike* claim is substantively different from the one that failed in *National Pork*. Instead, they maintain that their *Pike* claim is “a claim that a majority of this Court explicitly condoned in [*National Pork*].” Pet. 31. This theory, which depends on cobbling together parts of concurring and dissenting opinions in *National Pork*, *see Pet. 23-24*, fails twice over. First, Justice Barrett’s partial concurrence—upon which Petitioners depend for their fifth vote, Pet. 24—squarely *rejects* a *Pike* claim as Petitioners have framed it. Justice Barrett joined the portion of the plurality opinion concluding that weighing the “new costs” of complying with Proposition 12 against the “moral and health interests” it advances is “a task no court is equipped to undertake.” *National Pork*, 598 U.S. at 382 (plurality

opinion of Gorsuch, J.); *see also id.* at 393 (Barrett, J., concurring in part) (“I agree with Justice GORSUCH that the benefits and burdens of Proposition 12 are incommensurable.”).<sup>10</sup> Thus, the First Circuit was right to observe that “Justice Barrett’s concurrence cannot be combined with the dissenting opinion to save the day for Plaintiffs.” Pet. App. 28a.

Second, and regardless of whether Petitioners are right about Justice Barrett’s partial concurrence (which they are not), Petitioners are wrong to think that a controlling principle of law can be derived by combining concurring and dissenting opinions. “When . . . 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 v. United States*, 430 U.S. 188, 193 (1977) (emphasis added). “Dissenters, by definition, have not joined the Court’s decision.” *United States v. Robison*, 505 F.3d 1208, 1221 (11th Cir. 2007). And because it is impossible to derive from non-dissenting opinions in *National Pork* a principle that would allow Petitioners’ *Pike* claim to proceed, that claim fails.

In short, the First Circuit correctly rejected Petitioners’ *Pike* theory, holding that it—like the virtually

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<sup>10</sup> Therefore, the fact that Justice Barrett thought that the *National Pork* plaintiffs had adequately alleged a substantial burden on interstate commerce, *see* 598 U.S. at 394 (Barrett, J.), does not help Petitioners, because a successful *Pike* claim also requires weighing the law’s benefits and burdens. *See Pike*, 397 U.S. at 142 (non-discriminatory laws “will be upheld unless the burden imposed on [interstate] commerce is clearly excessive in relation to the putative local benefits”). That weighing is precisely what Justice Barrett deemed impossible in the case of Proposition 12.

identical one in *National Pork*—“falls well outside *Pike’s* heartland,” Pet. App. 28a (quoting *National Pork*, 598 U.S. at 380 (majority opinion)). Petitioners offer no reason to revisit any matters decided in *National Pork* given its nearly identical facts.

**C. The First Circuit Correctly Rejected Petitioners’ Remaining Constitutional Claims.**

Finally, as the First Circuit explained, Petitioners’ remaining constitutional claims all failed at the motion to dismiss stage. Pet. App. 13a-14a, 35a-38a. Petitioners offer no compelling arguments to the contrary in their cursory discussions of those claims in the Petition. Pet. 31-34.

First, because Petitioners are corporate entities, the Privileges and Immunities Clause of the Constitution, art IV, § 2, is inapplicable to them. *W. & S. Life Ins. Co. v. State Bd. of Equalization of California*, 451 U.S. 648, 656 (1981); *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 516 (2019).

Next, the Act does not violate the Full Faith and Credit Clause. As a threshold matter, that clause “does not give rise to an implied federal cause of action.” *Thompson v. Thompson*, 484 U.S. 174, 182-83 (1988). In any case, the Act does not ban farming practices in other states; rather, it bans the in-state sale of products resulting from certain practices. A State is not required to “substitute for its own statute, applicable to persons and events within it, the statute of another State reflecting a conflicting and opposed policy.” *Carroll v. Lanza*, 349 U.S. 408, 412 (1955).

Further, the Act is not “unconstitutionally vague” in violation of the Due Process Clause. The Act explicitly defines the terms “sale” and “turn around freely,” Mass. Gen. Laws Ann. ch. 129, App. § 1-5, and does so in a manner understandable to a person of “ordinary intelligence.” See *United States v. Williams*, 553 U.S. 285, 304 (2008).

Finally, the Act does not violate the Import-Export Clause, which is limited to products imported from foreign countries, not other states. *Tennessee Wine & Spirits Retailers Ass’n v. Thomas*, 588 U.S. 504, 516 (2019); *Woodruff v. Parham*, 75 U.S. 123, 136-37 (1869).

#### **IV. This Court Should Deny the Petition Without Calling for the Views of the Solicitor General.**

The Solicitor General’s views are not necessary here. As explained above, the FMIA preemption claim is both splitless and meritless; it does not warrant this Court’s review. And this Court denied the petition in *IPPA*, which presented nearly identical dormant Commerce Clause claims, without requesting the views of the United States. See *Iowa Pork Producers Ass’n v. Bonta*, No. 24-728, Docket. The Court should follow the same course here.

**CONCLUSION**

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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