

No. 25-1047

IN THE
Supreme Court of the United States

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

MASSACHUSETTS COMMISSIONER OF AGRICULTURE,

Respondents.

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

REPLY BRIEF OF PETITIONERS

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INTRODUCTION

Massachusetts' reframing of this case is telling. Massachusetts claims the Act "only bans the sale of noncompliant pork meat" and "does not regulate how a slaughterhouse operates." Br. in Opp. 9 (quoting Pet. App. 32a). But Congress's plain statutory language, the record, the Commonwealth's own admissions, and this Court's precedent confirm otherwise. This petition is the first challenge brought by an FMIA-regulated processor and actual farmers—not a trade association—who have suffered the operational disruptions these laws impose firsthand.

This Court held in *National Meat Ass'n v. Harris*, 565 U.S. 452 (2012), that the FMIA's express preemption clause "sweeps widely," preventing states from imposing "any additional or different—even if non-conflicting—requirements that fall within the scope of the [FMIA] and concern a slaughterhouse's facilities or operations." *Id.* at 459-60.

Massachusetts cannot avoid its imposition of "additional or different" requirements—especially when it admitted that slaughterhouses must sort the pigs separately inside the plant, prohibit cross contamination on the processing line, and track and identify compliant pork to sell into Massachusetts. Pet. App.47a. A requirement is not "voluntary" simply because a regulated entity may forgo an entire state's market rather than comply.

Massachusetts' opposition on the dormant Commerce Clause fares no better. In *NPPC*, this Court unanimously reaffirmed that the DCC prohibits discriminatory state laws—but because the *NPPC* petitioners expressly disclaimed any discrimination theory, the Court did not have the opportunity to apply that principle to a law like Proposition 12.

Petitioners here brought discrimination claims. This Court should grant review to resolve that unaddressed question, and to provide further guidance regarding *Pike* balancing.

Finally, Congress vested the USDA with exclusive authority over the federal meat inspection regime this case directly implicates. At a *minimum*, this Court should call for the views of the Solicitor General and permit the federal government to weigh in on the regulatory issues exclusively within its purview.

This Court should grant the petition.

ARGUMENT

I. Massachusetts’ Opposition Confirms the Case for Certiorari on the Preemption Question.

1. The parties’ competing articulations of the preemption question are revealing. Massachusetts restates the question as whether the FMIA—“which regulates the methods of slaughtering pigs and inspection of pork meat”—preempts a Massachusetts law “that prohibits sales of pork products . . . derived from cruel confinement of breeding pigs *on farms*.” Br. in Opp. i. That substitution encapsulates the First Circuit’s error.

The court of appeals held that the Act “regulates pork production, rather than pork inspection” and concluded that FMIA preemption cannot reach it. Br. in Opp. 10, 26 (quoting Pet. App. 33a). Massachusetts leans on *NPPC*’s observation that “Congress has yet to adopt any statute that might displace . . . laws regulating pork production.” 598 U.S. at 368; Br. in Opp. 18, 19. But that passage addressed the absence of affirmative legislation under the active Commerce Clause—it said nothing about the FMIA’s existing express preemption clause, which *Harris* resolved

unanimously. Both courts below use “pork production” to obscure the distinction between pig *farming* and federally inspected pork *processing*. *Harris* did not ask what label the state affixed to its law; it asked what the law inevitably compels the federally inspected facility to do. California made the same move in *Harris*—styling its law as regulating a condition via a sales ban—and this Court unanimously held the law “function[ed] as a command to slaughterhouses.” 565 U.S. at 464. The test is the *effect* on the processing facility, not the label on the supply chain.

The Act’s original slaughterhouse exemption illuminates the Commonwealth’s constitutional conundrum. Massachusetts exempted sales at FMIA-inspected establishments because it understood that subjecting those facilities to the sales ban would be preempted—itsself an admission that the Act imposes exactly the kind of operational requirements *Harris* forbids. But the exemption created a catch-22: it discriminated against out-of-state processors like Triumph, who could access it only by opening an in-state facility, so the district court struck and severed it. App. 71a-72a. That severance exposed two uncorrected errors. On discrimination: the exemption’s design—favoring in-state FMIA processors—is probative of discriminatory purpose and cannot be erased by severance; the First Circuit never weighed it. App. 20a-23a. On preemption: once the exemption was gone, every FMIA-regulated facility was fully within the ban’s reach, yet the courts below still failed to ask what the Act inevitably compels Triumph to do inside its federally inspected plant. The answer remains—segregate, sort, code, certify, and risk recall. *Harris*, 565 U.S. at 463-464.

2. Massachusetts answers that the changes

Triumph made are “not, in fact, required by the Act” and are merely incidental to ordinary business decisions. Br. in Opp. 25-26. In support, Massachusetts points to Triumph’s existing practice of differentiating products by “open pen gestation,” “grass-fed,” “premium,” organic, and non-GMO specifications. Br. in Opp. 5-6. But those are voluntary, market-driven choices—a processor may offer them or not based on consumer demand, and no state forecloses its market if it declines. The Act is categorically different. It is a state mandate backed by government enforcement, and a slaughterhouse that declines to segregate, track, and certify its pork is prohibited by law from selling into Massachusetts at all. That is not a business decision—it is legal compulsion. Conscripting that infrastructure for a state regulatory regime is no less an “additional or different” requirement under the FMIA.

Massachusetts also reduces the Act’s demands to “one more product code.” Br. in Opp. 6. But a product code is a post-processing label. The Act requires physical separation of every compliant animal from every conventional animal—from arrival through ante-mortem inspection, across a processing line that must stop and clear between runs, through every part of every carcass. That is a wholesale restructuring of facility operations, imposing “additional and different” requirements squarely within the FMIA’s scope. App. 27a-29a.

The First Circuit’s interpretation of *Harris* is a blueprint for regulatory patchwork the Constitution forbids. Under its logic, any state may regulate out-of-state farms through a sales ban, using access to its market to dictate how FMIA-regulated processors must restructure their operations. Massachusetts’

argument, if accepted, would hollow out FMIA preemption entirely. *Harris* asked whether the law’s “inevitable effect” was to command operational changes at federally inspected facilities. 565 U.S. at 463-464. The nationally integrated pork supply chain cannot absorb fifty different state versions of that mandate, each prescribing its own segregation, coding, certification, and recall protocols for facilities Congress expressly placed under a single federal regime. That is precisely the compliance chaos the FMIA’s express preemption clause was enacted to prevent. *See* 21 U.S.C. § 602; *Harris*, 565 U.S. at 464.

3. Massachusetts argues that preempting any law with “incidental effects” on slaughterhouse operations would swallow the savings clause. Br. in Opp. 25-26. But Petitioners do not argue incidental effects. The Act’s *primary and inevitable* effect is to restructure federally inspected facilities. FMIA regulations—including 9 C.F.R. §§ 309.1-3, 310.1, 310.3, 310.5, 310.18, 311.1, 313.1(c), 313.2(d)(1), and 418.2—govern the exact stages of ante-mortem and post-mortem inspection that the Act’s compliance requirements directly implicate. There is nothing incidental about adding new sorting procedures, new production lines, new product codes, new packaging and labeling, and new storage systems. Triumph receives its pig supply from Farmer Petitioners—including Hanor, which delivers approximately 1.8 million market pigs per year. App. 141a. To comply, Triumph must segregate compliant pigs from conventional pigs at every stage of processing—from arrival through post-mortem processing, packaging, and shipment. App. 159a. Even a single commingling event triggers a state-law-compelled “recall” of potentially thousands of pounds of USDA-inspected and approved pork—not because

federal inspectors found it unsafe, but solely because Massachusetts prefers that it not be sold there. App. 159a, 167a. That is precisely the operational mandate *Harris* held the FMIA preempts. *See* 565 U.S. at 463-464.

Retreading that ground, Massachusetts claims Petitioners “erroneous[ly] defin[e] the question presented” by omitting the requirement that preempted requirements fall “within the scope of [the FMIA].” Br. in Opp. 19. But Section 678 bars state requirements “with respect to premises, facilities and operations” of any FMIA-inspected establishment that are “in addition to, or different than” federal requirements. “Operations” is not a narrow term—federal regulations apply from the moment livestock arrives. *See Harris*, 565 U.S. at 458. The Act’s requirements—segregate at delivery, track, code, store, package, sell and ship by an individual state’s requirements—are each requirements “with respect to . . . operations” of an FMIA-inspected facility. App. 159a–160a, 167a.

The First Circuit found the Act “does not ‘render it impossible to comply with the [FMIA], nor serve as an obstacle to its purposes and objectives,’” Br. in Opp. 10, 27 (quoting Pet. App. 33a), but that conflict-preemption analysis is beside the point when it comes to express preemption.¹ Congress chose express preemption in 21 U.S.C. § 678 precisely to avoid the impossibility-or-obstacle inquiry. The question therefore is not whether the state law conflicts with federal law—it is whether the state law imposes requirements *in addition to or different than* federal requirements with respect to covered premises and

¹ To be clear, the Act also violates conflict preemption principles. *See* Pet. 29-30.

operations. It does.

II. The Dormant Commerce Clause Question Also Warrants Review.

Massachusetts frames the second question as whether a law “materially identical to the California law upheld in *National Pork Producers Council v. Ross*, 598 U.S. 356 (2023),” can nonetheless violate the dormant Commerce Clause. Br. in Opp. i. This framing papers over two questions *NPPC* did not resolve.

The discrimination question. This case presents the very discrimination allegations that *NPPC* expressly declined to reach, because the plaintiffs in *NPPC* had disclaimed them. Here, petitioners presented allegations and evidence of discriminatory intent and effect tied to a slaughterhouse exemption Massachusetts built into the original Act. The district court found that the exemption had “a discriminatory effect” because an out-of-state processor like Triumph could benefit only by opening an in-state federally inspected facility—then severed it. The First Circuit held there was insufficient evidence of discrimination with the exemption removed, and rejected an effects-based argument under *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117 (1978).

But the exemption’s existence and purpose do not vanish on severance, and the First Circuit’s refusal to weigh that evidence of discriminatory purpose cannot be squared with this Court’s discrimination jurisprudence.

The *Pike* question. Only a three-Justice minority in *NPPC* concluded *Pike* balancing is unworkable; a six-Justice majority “affirmatively retain[ed]” *Pike*. *Id.* at 403 (Kavanaugh, J., concurring in part and

dissenting in part); *see also id.* at 391-392 (Sotomayor, J., concurring in part). The First Circuit held that Justice Barrett’s concurrence—concluding benefits and burdens were “incommensurable,” *id.* at 392-394 (Barrett, J., concurring in part)—could not be combined with the dissenting opinions, and dismissed the *Pike* claim as falling “well outside *Pike*’s heartland.” That conclusion itself requires this Court’s guidance. Justice Barrett stated: “If the burdens and benefits were capable of judicial balancing, I would permit petitioners to proceed with their *Pike* claim.” *Id.* at 394. Absent guidance from this Court, lower courts will continue to reach conflicting answers on how *Pike* applies to extraterritorial sales regulations. *See Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970).

As a result, the First Circuit’s approach rests on the *Marks* framework—a position Respondents stake out as well—but that framework is itself the subject of a deep and acknowledged circuit split. *Compare, e.g., United States v. Johnson*, 467 F.3d 56, 65 (1st Cir. 2006) (counting dissenting votes for holding), *with Planned Parenthood of Indiana & Kentucky, Inc. v. Box*, 991 F.3d 740, 744-45 (7th Cir. 2021) (refusing to do so); *see also Nichols v. United States*, 511 U.S. 738, 745-46 (1994) (*Marks* “has so obviously baffled and divided the lower courts”). This Court’s fractured decision in *NPPC* cannot be resolved through a doctrine that is itself fractured.

Contrary to Respondents’ assertion, the lower courts are already fractured on what *NPPC* means for extraterritoriality and how *Pike* operates. *See Ass’n for Accessible Medicines v. Ellison*, 140 F.4th 957, 961 (8th Cir. 2025) (*NPPC* preserves freestanding extraterritoriality doctrine for laws directly controlling out-of-state prices); *but see New Jersey*

Staffing Alliance v. Fais, 110 F.4th 201, 207 (3d Cir. 2024) (DCC does not bar laws for extraterritorial reach alone absent protectionist intent); *Ass’n for Accessible Medicines v. Raoul*, 805 F. Supp. 3d 854, 869 (N.D. Ill. 2025) (*Ellison* is “a misreading of *Ross*”); *Styczinski v. Arnold*, 727 F. Supp. 3d 821, 828-29 (D. Minn. 2024) (“a good argument that the entire statute is constitutional under [NPPC],” but declining to depart from circuit precedent); *Truesdell v. Friedlander*, 80 F.4th 762, 773-76 (6th Cir. 2023) (NPPC imposes a threshold “substantial burdens” requirement before *Pike* balancing); *but see KCD KC Disposal LLC v. City of Independence, MO*, No. 24-00611-CV-W-BP, 2025 WL 3763381, at *5-6 (W.D. Mo. Apr. 8, 2025) (*Pike* balancing “still needs to be conducted” for nondiscriminatory ordinances); *Becky’s Broncos, LLC v. Town of Nantucket*, No. 1:24-CV-11308-AK, 2026 WL 851203, at *5-6 (D. Mass. Mar. 27, 2026) (declining *Pike* balancing on incommensurability grounds).

III. This Case Presents Far More Than Error Correction.

A. Massachusetts’ reading is a repudiation of *Harris*.

Massachusetts mischaracterizes this petition as a fact-bound request for error correction. *Harris* addressed a state’s attempt to dictate a slaughterhouse’s actions upon hog delivery through the sword of a sales ban. The question here is whether *Harris*’s principle—that a sales ban cannot impose requirements the FMIA does not require—extends to a deliberately engineered state law that reaches the same result by regulating upstream (pig farming) and downstream (sales) while leaving the slaughterhouse unaddressed in the text but inevitable in practice.

Defeated in *Harris*, states have engineered a strategy to circumvent this Court’s direction by regulating through the supply chain’s front and back ends, which by default dictates what must happen in the federally regulated middle. That workaround presents a new and important question this Court must resolve.

B. The national stakes are immediate and concrete.

Massachusetts asks the Court to view this as a localized regulation of in-state commerce. The economic reality is the opposite. Massachusetts consumes roughly 356.8 million pounds of retail pork annually while producing only approximately 1.9 million pounds—meaning the overwhelming practical burden of compliance falls on out-of-state producers, processors, and the national supply chain. Am. Compl. ¶ 165, App. 161a. The Act threatens stockouts, supply shortfalls, and substantial pork price increases that fall disproportionately on food-insecure households. If Massachusetts can do this, so can every other state with their own variations—forcing FMIA-regulated establishments to attempt to operate under “50 different state regimes,” paralyzing the slaughterhouses’ production and fracturing the uniform federal framework Congress built. 21 U.S.C. § 602; Pet. 25.²

² After Petitioners filed the petition, the petitioner (as well as supporting amici) in *Suncor Energy (U.S.A.) Inc. v. Board of County Commissioners* (No. 25-170) filed their briefing. As many amici there (e.g., Frontier Institute, Buckeye Institute, Alabama, and the Chamber of Commerce) similarly recognize, permitting individual states to project regulatory mandates onto nationally integrated markets through downstream sales restrictions threatens the constitutional structure of interstate commerce and invites precisely the retaliatory “trade wars” the dormant Commerce Clause was designed to prevent. Depending on the

C. Massachusetts’ “Wait for More States” argument is an invitation to the trade wars the Constitution prohibits.

Massachusetts urges denial on the ground that the issues need to “percolate” further. Br. in Opp. 11-13. That argument should be rejected: it is an invitation to let the constitutional damage accumulate. Every additional state-law variation increases the compliance patchwork and entrenches the precise end-run that *Harris* warned against—making clarity on federal uniformity even more urgent. Percolation has value when lower courts are working through genuinely unsettled legal terrain. It has no value when the lower court has simply refused to follow a binding, unanimous precedent of this Court based on an engineered workaround. Whether the FMIA’s express preemption clause means what it says requires a clear ruling from this Court now.

IV. The Other Dismissed Claims Also Independently Warrant Review.

Beyond those questions, the district court dismissed nine of Petitioners’ ten counts from the bench—without review or analysis—after limiting briefing to the dormant Commerce Clause alone. The First Circuit did little more. Given that Justices on this Court have already signaled that those theories may provide constitutional shelter from protectionist state regulation, *see NPPC*, 598 U.S. at 407-09 (Kavanaugh, J., concurring in part and dissenting in part), these claims warrant review for the reasons articulated in the petition. Pet. 31-34.

grounds upon which this Court decides *Suncor*, that decision may further impact the landscape of this case going forward.

V. The Court Should Call for the Views of the Solicitor General.

Massachusetts argues the Solicitor General's views are unnecessary because the preemption claim is "splitless and meritless" and because certiorari was denied in *IPPA* without requesting the United States' views. Br. in Opp. 34-35. Neither point holds.

The absence of a circuit split on the preemption question should not deter this Court. States are disrupting the constitutional balance of power and defying Congress' express preemption enactment in contravention of this Court's precedents. The merits of these claims are for this Court to decide—but the agency Congress charged with enforcing the FMIA should be heard before it does.

IPPA presented only Commerce Clause claims against California's Proposition 12 and raised no FMIA preemption question, and the petitioner was not an industry group representing slaughterhouses—only farmers. *See* Br. in Opp. 34-35. By contrast, the United States appeared as amicus at both stages in *Harris*, and its position on FMIA preemption was material to this Court's analysis. Whether the Act's compelled segregation, tracking, and coding requirements conflict with USDA's ante- and post-mortem inspection standards under 9 C.F.R. §§ 309, 310, and 311 warrants agency input before this Court acts.

CONCLUSION

This Court should grant the petition. At the very least, this Court should call for the views of the Solicitor General.

Respectfully submitted,

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