

21-468 NATIONAL PORK PRODUCERS COUNCIL V. ROSS

DECISION BELOW: 6 F.4th 1021

LOWER COURT CASE NUMBER: 20-55631

QUESTION PRESENTED:

Proposition 12 bans the sale of pork in California unless the sow from which it derived was housed with space allowances that almost no farms satisfy (for good reason). Californians account for 13% of the Nation's pork consumption, but raise hardly any pigs. The massive costs of complying with Proposition 12 fall almost exclusively on out-of-state farmers. And because a single pig is processed into cuts that are sold nationwide in response to demand, those costs will be passed on to consumers everywhere, in countless transactions having nothing to do with California.

The Ninth Circuit acknowledged that petitioners plausibly allege that Proposition 12 has "dramatic upstream effects," requires "pervasive changes to the pork production industry nationwide," and imposes costs that "mostly fall on non-California transactions." Nevertheless- in conflict with other circuits and contrary to the views of *amici* the United States, 20 States, and business groups-it held that petitioners failed to plead a dormant Commerce Clause violation. In doing so, it brushed aside this Court's decisions holding that laws with significant extraterritorial effects violate our federalist scheme, and failed to engage in meaningful balancing under *Pike v. Bruce Church, Inc.* The questions presented are:

Whether allegations that a state law has dramatic economic effects largely outside of the state and requires pervasive changes to an integrated nationwide industry state a violation of the dormant Commerce Clause, or whether the extraterritoriality principle described in this Court's decisions is now a dead letter.

Whether such allegations, concerning a law that is based solely on preferences regarding out-of-state housing of farm animals, state a *Pike* claim.

CERT. GRANTED 3/28/2022