

1 THOMAS M. FISHER  
2 SOLICITOR GENERAL  
3 KIAN J. HUDSON  
4 DEPUTY SOLICITOR GENERAL  
5 JULIA C. PAYNE  
6 DEPUTY ATTORNEY GENERAL  
7 OFFICE OF THE ATTORNEY GENERAL  
8 302 W. Washington Street, IGCS 5<sup>th</sup> Floor  
9 Indianapolis, IN 46204-2770  
10 Email: Tom.Fisher@atg.in.gov  
11 Telephone: (317) 232-6255  
12 Facsimile: (317) 232-7979  
13 Appearing *pro hac vice*

14 EDWARD S. RENWICK, SBN 29325  
15 Email: erenwick@hanmor.com  
16 HANNA & MORTON LLP  
17 444 S. Flower St., Suite 2530  
18 Los Angeles, CA 90071  
19 Telephone: (213) 628-7131  
20 Facsimile: (213) 623-3379

21 *Attorneys for Amici Curiae*  
22 *State of Indiana et al.*  
23 (Additional Counsel Listed at End)

24 **UNITED STATES DISTRICT COURT**  
25 **CENTRAL DISTRICT OF CALIFORNIA**

26 NORTH AMERICAN MEAT INSTITUTE,

27 Plaintiff,

28 v.

XAVIER BECERRA, in his official capacity  
as Attorney General of California, KAREN  
ROSS, in her official capacity as Secretary of  
the California Department of Food and  
Agriculture, and SUSAN FANELLI, in her  
official capacity as Acting Director of the  
California Department of Public Health,

Defendants.

Case No. 2:19-cv-8569-CAS(FFMx)

**AMICUS BRIEF OF INDIANA,  
ALABAMA, ARKANSAS, KANSAS,  
LOUISIANA, MISSOURI,  
OKLAHOMA, SOUTH CAROLINA,  
AND UTAH IN SUPPORT OF  
PLAINTIFF’S REQUEST FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF**

The Honorable Christina A. Snyder  
Date: November 25, 2019  
Location: Courtroom 8D  
Complaint filed: October 4, 2019

**FILED**  
CLERK, U.S. DISTRICT COURT  
November 13, 2019  
CENTRAL DISTRICT OF CALIFORNIA  
BY: CMJ DEPUTY



1 animals not raised in accordance with California animal-confinement standards—including  
2 animals raised in other States—Proposition 12 has the practical effect of regulating extraterritorial  
3 commerce. Farm owners and operators located outside of California will be forced to either  
4 modify their farming operations to comply with California’s animal-confinement regulations or  
5 exit California’s market. This is precisely the type of interstate trade friction that the Commerce  
6 Clause was designed to prevent.

7 Furthermore, Proposition 12’s sales ban is a substantial burden on interstate commerce  
8 that is excessive in relation to local benefits. The burden imposed by the sales ban will largely  
9 fall on out-of-state farm owners and operators, as California is not a significant producer of veal  
10 and pork compared to the rest of the United States. California has offered little evidence of a  
11 legitimate local interest protected by the sales ban that would outweigh the excessive and  
12 substantial burden on interstate commerce.

13 Because the Proposition 12 sales ban regulates extraterritorial commerce and burdens  
14 interstate commerce in violation of the Commerce Clause, the court should grant Plaintiff’s  
15 motion for injunctive and declaratory relief.

## 16 ARGUMENT

17 Because the Commerce Clause vests Congress with the exclusive power to regulate  
18 interstate commerce, *La. Pub. Serv. Comm’n v. Tex. & N.O.R. Co.*, 284 U.S. 125, 130 (1931), it  
19 correspondingly limits the power of states “to erect barriers against interstate trade,” *Maine v.*  
20 *Taylor*, 477 U.S. 131, 137 (1986). Indeed, the Framers’ central concern in including the  
21 Commerce Clause in the Constitution was preventing the friction between States caused by the  
22 interstate trade barriers prevalent under the Articles of Confederation. *See Hughes v. Oklahoma*,  
23 441 U.S. 322, 325 (1979). “The entire Constitution was ‘framed upon the theory that the peoples  
24 of the several states must sink or swim together, and that in the long run prosperity and salvation  
25 are in union and not division.’” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 349 n.12 (1989) (quoting  
26 *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523 (1935)). The interstate trade barriers prohibited  
27 by the Commerce Clause include state regulations imposed on commerce occurring in *other*  
28 States; this prohibition on extraterritorial regulation “reflect[s] the Constitution’s special concern

1 both with the maintenance of a national economic union unfettered by state-imposed limitations  
 2 on interstate commerce and with the autonomy of the individual States within their respective  
 3 spheres.” *Id.* at 335–36. And state laws that do not regulate extraterritorial commerce but have  
 4 the effect of impeding interstate commerce are subject to a balancing test: Do the burdens imposed  
 5 on interstate commerce by the statute “clearly outweigh the local benefits?” *Rosenblatt v. City of*  
 6 *Santa Monica*, No. 17-55879, 2019 WL 4867397 at \*10 (9th Cir. October 3, 2019). If so, the  
 7 statute violates the Commerce Clause. *Id.*

8 **I. Proposition 12’s sales ban attempts to regulate extraterritorial commerce by**  
 9 **imposing California’s requirements on commercial transactions that occur**  
 10 **wholly outside California, including transactions within Amici States**

11 In applying the Commerce Clause’s prohibition on extraterritorial regulation, the Supreme  
 12 Court has explained that a state legislature’s power to enact laws is similar to a state court’s  
 13 jurisdiction to hear cases—“[i]n either case, any attempt directly to assert extraterritorial  
 14 jurisdiction over persons or property would offend sister States and exceed the inherent limits of  
 15 the State’s power.” *Healy v. Beer Inst., Inc.*, 491 U.S. 324, 349 n.13 (1989) (internal quotation  
 16 marks and citation omitted). The Ninth Circuit has specifically held that California cannot use a  
 17 ban on in-state *sales* as a method to regulate upstream commercial practices (such as production)  
 18 that California thinks are objectionable. *See Daniels Sharpsmart, Inc. v. Smith*, 889 F.3d 608, 615  
 19 (reasoning that the “mere fact that some nexus to a state exists will not justify regulation of wholly  
 20 out-of-state transactions”); *see also Brown-Forman Distillers Corp. v. N.Y. State Liquor Auth.*,  
 21 476 U.S. 573, 582-83 (1986) (holding that a state “may not project its legislation into [other  
 22 states]” (internal quotation omitted)); *Sam Francis Found. v. Christies, Inc.*, 784 F.3d 1320, 1322  
 23 (9th Cir. 2015) (en banc) (holding that the Commerce Clause did not permit California to regulate  
 24 the terms and conditions of out-of-state art sales merely on the ground that the seller resided in  
 25 California). Furthermore, even a regulation that does not explicitly regulate interstate commerce  
 26 may do so “nonetheless by its practical effect and design.” *C&A Carbone v. Town of Clarkstown*,  
 27 511 U.S. 383, 394 (1994).

28 In *Carbone*, for example, the Court held that an ordinance requiring all local solid waste

1 to be processed at a local transfer station violated the Commerce Clause because it deprived out-  
2 of-state competitors of access to a market. *Id.* at 386. Though the ordinance did not regulate  
3 extraterritorially on its face, it did so in effect because it barred out-of-state businesses from the  
4 market. The town argued that it adopted the ordinance to minimize its own environmental  
5 footprint, but the Court held that the town’s motivation did not permit it to “attach restrictions to  
6 exports or imports in order to control commerce in other States” and thereby “extend the town’s  
7 police power beyond its jurisdictional bounds.” *Id.* at 393.

8 The Commerce Clause thus precludes “the application of a state statute to commerce that  
9 takes places wholly outside of the State’s borders, whether or not the commerce has effects within  
10 the State,” and a “state law that has the practical effect of regulating commerce occurring wholly  
11 outside that State’s borders is invalid under the Commerce Clause,” *Healy*, 491 U.S. at 336, 332  
12 (internal quotation marks and citations omitted). This prohibition on extraterritorial regulation  
13 applies “regardless of whether the statute’s extraterritorial reach was intended by the legislature.”  
14 *Id.* at 336. Accordingly, determining whether a state regulation constitutes prohibited  
15 extraterritorial regulation requires considering not merely the bare text of the statute but also the  
16 law’s “practical effect,” including “the consequences of the statute itself” and how that statute  
17 may “interact with the legitimate regulatory regimes of other States.” *Id.*

18 Here, by regulating the supply chain of pork and veal into California, the sales ban will  
19 inevitably have the effect of regulating transactions taking place entirely outside California.  
20 Indiana, for example, is the fifth largest pork producer in the United States. *State Rankings by*  
21 *Hogs and Pigs Inventory* (June 14, 2018) [https://www.pork.org/facts/stats/structure-and-](https://www.pork.org/facts/stats/structure-and-productivity/state-rankings-by-hogs-and-pigs-inventory/)  
22 [productivity/state-rankings-by-hogs-and-pigs-inventory/](https://www.pork.org/facts/stats/structure-and-productivity/state-rankings-by-hogs-and-pigs-inventory/). And the agricultural supply chain  
23 leading from Indiana and other States to California typically requires multiple out-of-state  
24 transactions, such as farm procurement and production, sale to distributors, and slaughter and  
25 packing (followed by sale to California retailers and ultimate sale to consumers).

26 What is more, sometimes these transactions are undertaken by States themselves. For  
27 example, Purdue University—an instrumentality of the State of Indiana—owns and operates  
28 farms through the Animal Sciences Research and Education Center (ASREC) that confine

1 animals, including swine and poultry, in conditions that do not comply with Proposition 12.  
2 Purdue then sells livestock to distributors (including Tyson Foods) who in turn sell to retail  
3 customers nationwide. *See generally* Brian Ford, *Swine Unit*, Purdue College of Agriculture  
4 <https://ag.purdue.edu/ansc/ASREC/Pages/SwineUnit.aspx>. Purdue’s commercial transactions  
5 with those wholesalers occur wholly outside California, but may nonetheless be regulated by  
6 Proposition 12 unless the wholesalers choose to forego the California market altogether. That  
7 same model of interstate regulation will be replicated over and over as to private and public farms  
8 in Indiana and other states. Proposition 12 thus requires other States’ farmers either to overhaul  
9 their manner of pork production to comply with California’s regulations or lose access to the  
10 enormous California market.

11 Moreover, Proposition 12 threatens to interfere with “the legitimate regulatory regimes of  
12 other states,” *Healy*, 491 U.S. at 336, and threatens to subject farmers across the country to  
13 conflicting requirements. The vast majority of States have chosen to permit farmers to raise  
14 calves, hogs, and hens in accordance with commercial standards and agricultural best practices  
15 rather than impose specific animal-confinement requirements. *See generally*, Elizabeth R.  
16 Rumley, The National Agricultural Law Center, *States’ Farm Animal Confinement Statutes*,  
17 <https://nationalaglawcenter.org/state-compilations/farm-animal-welfare/>. It is easy to imagine  
18 farmers getting caught in the crossfire as other States attempt to impose regulations that differ  
19 from California’s—a problem that will only get worse as other States attempt to impose their own  
20 extraterritorial regulations. This would constitute exactly the sort of trade war the Commerce  
21 Clause was designed to prevent.

22 Proposition 12’s sales ban parallels the extraterritorial regulation invalidated in *Healy* and  
23 *Daniels Sharpsmart*. In *Healy*, Connecticut threatened to bar beer distributors from the State’s  
24 beer market if they refused to comply with a state law requiring distributors to sell beer *outside*  
25 Connecticut at the same price they sold it *in* Connecticut. *See* 491 U.S. at 326–27. And in *Daniels*  
26 *Sharpsmart*, California attempted to require a medical-waste transport and disposal company to  
27 dispose of all biohazardous medical waste originating in California by incineration, even if the  
28 disposal occurred in another State, and even if the other State permitted an alternative method;

1 the company’s only options were either to comply or exit the California market. *See* 889 F.3d at  
2 612–13. Connecticut’s pricing law, California’s waste-disposal law, and Proposition 12 all violate  
3 the Commerce Clause because they have “the undeniable effect of controlling commercial activity  
4 occurring wholly outside the boundary of the state,” and have the effect of creating “just the kind  
5 of competing and interlocking local economic regulation that the Commerce Clause was meant  
6 to preclude.” *Healy*, 491 U.S. at 337. *See also Daniels Sharpsmart*, 889 F.3d at 616 (noting that  
7 California had “attempted to regulate waste treatment everywhere in the country” and that  
8 California could effectively require the company “run afoul of other states’ regulation of medical  
9 waste disposal within their jurisdictions”).

10 Proposition 12’s sales ban will require farmers in other states to adjust their animal-  
11 husbandry practices as the price for maintaining access to California’s market and will undermine  
12 other States’ policies of nonregulation in this area. Proposition 12 accordingly violates the  
13 Commerce Clause and should be enjoined.

14 **II. California’s imposition of policy choices on Amici States conducting**  
15 **transactions in and outside of California substantially and excessively burdens**  
16 **interstate commerce in violation of the Commerce Clause**

17 Proposition 12’s sales ban violates the Commerce Clause because it regulates  
18 extraterritorial commerce. But it also violates the Commerce Clause for a separate, independently  
19 sufficient reason: It substantially burdens interstate commerce in excess of any local benefits.

20 The Commerce Clause does not permit States to adopt a law that “imposes a burden on  
21 interstate commerce that is clearly excessive in relation to its local benefits. *Rocky Mt. Farmers*  
22 *Union v. Corey*, 730 F.3d 1070, 1078 (9th Cir. 2013) (internal quotation marks and citation  
23 omitted). And a law that impacts the flow of products across state borders and interferes with the  
24 “natural functioning of the interstate market” significantly burdens interstate commerce. *See*  
25 *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 127 (1978); *Hughes v. Alexandria Scrap*  
26 *Corp.*, 426 U.S. 794, 805–06 (1976); *Nat’l Ass’s of Optometrists & Opticians v. Harris*, 682 F.3d  
27 1144, 1154 (9th Cir. 2012) (describing the test for whether a regulation burdens interstate  
28 commerce as turning on a “change in the flow of goods into the state, not on profits”).

1 Notably, Massachusetts, Maine, Michigan, and Rhode Island are the only States that have  
2 enacted animal-confinement laws that satisfy California’s current rules (which require farmers to  
3 refrain from “confining a covered animal in a manner that prevents the animal from lying down,  
4 standing up, fully extending the animal’s limbs, or turning around freely,” Cal. Health and Safety  
5 Code § 25991(e)(1)). *See* Mass. Gen. Laws ch. S51A, §§ 1-5; Me. State. tit. 7, § 4020(2); Mich.  
6 Comp. Laws § 287.746(2); 4 R.I. Gen. Laws. § 4-1.1-3. Indeed, the rules Proposition 12’s sales  
7 ban applies to farmers nationwide are set to change after December 31, 2019 for calf raised for  
8 veal (“less than 43 square feet of usable floorspace per calf) and after December 31, 2021 for  
9 breeding pigs (less than 24 square feet of usable floorspace per pig); few if any States currently  
10 impose such stringent requirements. *See* Cal. Health and Safety Code § 25991(e)(2)–(3); *compare*  
11 *to* Rumley, *supra* I.

12 The burden of Proposition 12’s requirements will thus fall disproportionately on out-of-  
13 state producers. The effect of the sales ban will require farm owners and operators in all States to  
14 either overhaul their currently legitimate agricultural production methods or withdraw from  
15 California’s market. Because California does not produce milk-fed veal, *see* ECF 15-3 at 5, and  
16 accounts for only a small portion of hog production in the United States (*see* USDA, National  
17 Agricultural Statistics Service, Livestock Slaughter at 44–45 (Apr. 2019)  
18 [https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/8336h934w/hq37vx004/  
19 lsslan19.pdf](https://downloads.usda.library.cornell.edu/usda-esmis/files/r207tp32d/8336h934w/hq37vx004/lsslan19.pdf)), mass withdrawal from California’s market would inevitably change the flow of  
20 goods into the state and interfere with the natural functioning of the pork and veal market.

21 Furthermore, California has failed to provide evidence of a legitimate local interest, much  
22 less provided evidence that it has no other means to promote this interest or that this interest  
23 outweighs the burden on interstate commerce. Proposition 12 provides that its purpose is “to  
24 prevent animal cruelty” and reduce “the risk of foodborne illness.” 2018 Cal. Legis. Serv. Prop.  
25 12 (West). Of course, because California enacted the sales ban through a ballot proposition, no  
26 legislative judgments support the assertion that the sales ban is necessary to further either of these  
27 purposes. *Duncan v. Becerra*, 366 F. Supp. 3d 1131, 1167–68 (S.D. Cal. 2019). And in any case,  
28 California does not have a legitimate interest in preventing what it views as animal cruelty



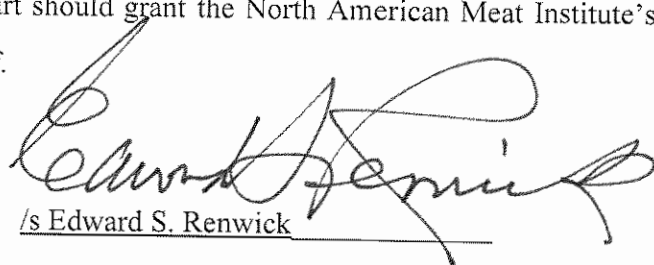
1 occurring in *other* States, because determining whether a state law runs afoul of the Commerce  
2 Clause requires weighing the law’s adverse effects on interstate commerce against its “putative  
3 *local* benefits.” See *Pac. Nw. Venison Producers v. Smitch*, 20 F.3d 1008, 1014 (9th Cir. 1994)  
4 (quoting *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970)) (emphasis added). Nor can the  
5 interest in preventing foodborne illness support Proposition 12, as California has failed to provide  
6 any evidence of a link between preventing foodborne illness from pork and veal and its animal-  
7 confinement regulations. See ECF 15-2 at 3. After all, veal and pork produced in other States is  
8 “already subject to a comprehensive federal meat inspection program that is highly effective in  
9 preventing foodborne illness.” ECF 15-2 at 3.

10 The interests purportedly served by Proposition 12 are thus illusory. Given the lack of  
11 evidence of a legitimate local interest that would outweigh the clearly significant burden on  
12 interstate commerce, this court should enjoin Proposition 12’s sales ban.

CONCLUSION

For the foregoing reasons, this court should grant the North American Meat Institute's motion for injunctive and declaratory relief.

Dated: November 4, 2019

  
/s Edward S. Renwick

THOMAS M. FISHER  
SOLICITOR GENERAL  
KIAN J. HUDSON  
DEPUTY SOLICITOR GENERAL  
JULIA C. PAYNE  
DEPUTY ATTORNEY GENERAL  
OFFICE OF THE ATTORNEY GENERAL  
302 W. Washington Street, IGCS 5<sup>th</sup> Floor  
Indianapolis, IN 46204-2770  
Email: Tom.Fisher@atg.in.gov

EDWARD S. RENWICK, SBN 29325  
erenwick@hanmor.com  
HANNA & MORTON LLP  
444 S. Flower St., Suite 2530  
Los Angeles, CA 90071  
Telephone: (213) 628-7131  
Facsimile: (213) 623-3379

*Attorneys for Amici Curiae State of Indiana et al.*

ADDITIONAL COUNSEL  
*Counsel for Amici States*

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STEVE MARSHALL  
Attorney General  
State of Alabama

ERIC SCHMITT  
Attorney General  
State of Missouri

LESLIE RUTLEDGE  
Attorney General  
State of Arkansas

MIKE HUNTER  
Attorney General  
State of Oklahoma

DEREK SCHMIDT  
Attorney General  
State of Kansas

ALAN WILSON  
Attorney General  
State of South Carolina

JEFF LANDRY  
Attorney General  
State of Louisiana

SEAN D. REYES  
Attorney General  
State of Utah