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18 Council & American Farm Bureau Federation

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

16 NATIONAL PORK PRODUCERS
17 COUNCIL & AMERICAN FARM
18 BUREAU FEDERATION,

19 Plaintiffs,

20 v.

21 KAREN ROSS, in her official capacity
22 as Secretary of the California
23 Department of Food & Agriculture, &
24 SONIA ANGELL, in her official
25 capacity as Director of the California
26 Department of Public Health, and
27 XAVIER BECERRA, in his official
28 capacity as Attorney General of
California,

Defendants.

CASE NO. '19CV2324 W AHG

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

1 Plaintiffs the National Pork Producers Council and the American Farm
2 Bureau Federation allege upon information and belief as follows:

3 **INTRODUCTION AND NATURE OF CLAIMS**

4 1. The market for pork produced in the United States (“U.S.”) is
5 enormous and national and international in scope.

6 2. It meets a demand for high-quality, affordable protein.

7 3. According to the U.S. Department of Agriculture’s Census of
8 Agriculture for 2017, nearly 65,000 farms nationwide sold hogs that year with a
9 market value of more than \$26 billion.

10 4. During the first nine months of 2019, some 94 million hogs were
11 slaughtered at federally inspected facilities, for a rate of about 125 million hogs
12 slaughtered per year.

13 5. Pigs are raised throughout the country, but production is concentrated
14 in the Midwest and North Carolina. The latest Agriculture Census reported that
15 22.7 million pigs were sold by Iowa farms in 2017, 8 to 9 million each by North
16 Carolina, Oklahoma, and Minnesota farms, 5.25 million by Illinois farms, and 4.5
17 million by South Dakota farms.

18 6. The U.S. is one of the world’s top five pork exporters. It has exported
19 over 5 billion pounds of fresh and frozen pork cuts annually to foreign markets, on
20 average, since 2010, principally to Mexico, China, Japan, and Canada.

21 7. The U.S. commercial production chain for pork is complex and
22 varied, using principally a segmented production model driven by herd health
23 considerations and to achieve economies of scale.

24 8. Sows are female pigs held for breeding that give birth to the piglets
25 that ultimately become hogs sent to market. For disease prevention and efficiency,
26 sows are usually maintained on sow-specific farms that are commonly separated
27 from other hog facilities. On those sow farms, the sows are generally artificially
28 inseminated, litters of piglets are born (“farrowed”), and the piglets are then raised

1 for about three weeks before they are weaned at the weight of approximately 10
2 pounds.

3 9. The overwhelmingly vast majority of sow farms use some type of
4 indoor confinement for these processes. Indoor housing allows year-round
5 production by protecting sows from seasonal weather changes, disease exposure,
6 and predators, while facilitating the management of each sow's health,
7 conditioning, feeding, and reproduction.

8 10. Only a small portion of the pigs that are slaughtered for meat are sows
9 that have been kept to reproduce—only 2.2 million in the first nine months of
10 2019, compared to 91.8 million of their male (“barrows”) and female offspring,
11 which are raised as feeder or market hogs. And almost none of the meat from
12 those sows is sold as whole pork cuts; it is instead used in prepared or cooked
13 products and sausages.

14 11. The offspring of sows (“market hogs”) are raised to market weight in
15 separate, specialized production facilities: (1) feeder pig producers, or nurseries,
16 which raise pigs from weaning to about 40-60 pounds, then sell them for finishing;
17 (2) feeder pig finishers, which buy feeder pigs and grow them to their slaughter
18 weight of about 240-280 pounds; and (3) farrow-to-finish operations, a small
19 percentage of farms that raise hogs from weaning to their slaughter weight.
20 Farrow to finish takes 24-26 weeks.

21 12. Once they reach slaughter weight, hogs are sent to packing facilities,
22 which may be local or in other states. Packer facilities receive hogs from multiple
23 farms, operated by multiple producers. These farms may be owned by affiliates of
24 the packer, by producers who have contracts to deliver hogs to the packer, or by
25 independent producers.

26 13. A packing facility typically slaughters thousands, or even tens of
27 thousands, of hogs daily. Packers process the slaughtered hogs into whole pork
28 cuts (or send them to separate processing facilities for this and later steps), pack the

1 meat, and deliver it to wholesale or large retail customers throughout the country
2 and abroad.

3 14. California's Proposition 12, challenged here, is a ballot initiative that
4 was passed in November 2018 and that amended the California Health and Safety
5 Code.

6 15. Proposition 12 has thrown a giant wrench into the workings of the
7 interstate market in pork.

8 16. In California itself, there are estimated to be only some 8,000
9 breeding sows, most of which are in family-focused "4-H" and other county fair
10 and similar show-pig programs.

11 17. It is believed that only about 1,500 out of California's 8,000 sows are
12 used in commercial breeding in the state, housed in a handful of very small farms.

13 18. Commercial sows typically produce two litters a year of about 10
14 piglets, so those 1,500 sows may produce around 30,000 offspring a year. Those
15 sows are therefore insufficient even to supply the current in-state farms' annual
16 capacity of approximately 65,000 commercial hog finishing spaces that exist in
17 California, which must therefore be filled from out-of-state sows.

18 19. By contrast to the tens of millions of hogs sold by farms in many other
19 states, the Agriculture Census reports that only 208,000 hogs were sold by all
20 farms in California in 2017, including those born (farrowed) outside California.

21 20. California's pork consumption makes up about 13 percent of the
22 national market. Accordingly, California's in-state sow breeding scarcely puts a
23 dent in the demand for pork consumed in the state. The offspring of about 673,000
24 sows is required to satisfy California consumers' demand for pork meat annually,
25 compared to the 1,500 sows that are commercially bred in-state.

26 21. Proposition 12 forbids the sale in California of whole pork meat from
27 hogs born of sows that were not housed in conformity with the law's requirements.
28

1 22. A violation of Proposition 12 is a criminal offense punishable by fines
2 and imprisonment, and also the basis for civil liability under California’s unfair
3 competition statute.

4 23. Proposition 12 requires that a sow cannot be confined in such a way
5 that it cannot lie down, stand up, fully extend its limbs, or turn around without
6 touching the sides of its stall or another animal. This requirement is often referred
7 to as “stand up-turn around.”

8 24. Stand-up turn-around effectively requires that producers house their
9 sows together in a group, referred to as “group housing.” This housing structure
10 may also be referred to as a “pen.” In contrast, individual stalls each hold one sow
11 apiece and do not allow sows to turn around.

12 25. Proposition 12 bans the use of individual stalls that do not meet stand-
13 up turn-around requirements, except during the five-day period prior to farrowing
14 and during weaning. It accordingly bars the use of individual stalls during
15 breeding and most of the gestation period.

16 26. After December 31, 2021—but with immediate impact now on what
17 producers must do given the lead time needed for building and production
18 changes—each sow must be allotted at least 24 square feet of space in the group
19 pen, subject to the same limited exception for the five-day period prior to
20 farrowing and during weaning.

21 27. Only a miniscule portion of sows in the U.S. are housed in compliance
22 with all of Proposition 12’s requirements.

23 28. Proposition 12 institutes a wholesale change in how pork is raised and
24 marketed in this country. Its requirements are inconsistent with industry practices
25 and standards, generations of producer experience, scientific research, and the
26 standards set by other states. They impose on producers costly mandates that
27 substantially interfere with commerce among the states in hogs and whole pork
28 meat. And they impose these enormous costs on pork producers, which will

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