

**No. 20-55631**

---

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

---

NATIONAL PORK PRODUCERS COUNCIL, ET AL.,

*Plaintiffs-Appellant,*

v.

KAREN ROSS, ET AL.,

*Defendant-Appellee,*

THE HUMANE SOCIETY OF THE UNITED STATES, ET AL.,

*Intervenor-Defendants-Appellees.*

On Appeal from the United States District Court  
For the Southern District of California,  
No. 3:19-cv-02324-W-AHG (Hon. Thomas J. Whelan)

---

**BRIEF OF HEALTH CARE WITHOUT HARM, THE NATIONAL COUNCIL FOR  
OCCUPATIONAL SAFETY AND HEALTH, THE CONSUMER FEDERATION OF  
AMERICA, AND FOOD & WATER WATCH AS *AMICI CURIAE* IN SUPPORT OF  
APPELLEES**

---

**Ian E. Roberts**  
SHEARMAN & STERLING LLP  
2828 North Harwood St., 18th Fl.  
Dallas, TX 75201  
Telephone: 1.214.271.5777  
Facsimile: 1.214.271.5788  
ian.roberts@shearman.com

**L. Kieran Kieckhefer**  
SHEARMAN & STERLING LLP  
535 Mission St., 25th Fl.  
San Francisco, CA 94105  
Telephone: 1.415.616.1100  
Facsimile: 1.415.616.1301  
kieran.kieckhefer@shearman.com

**Matthew G. Berkowitz**  
**Yue (Joy) Wang**  
SHEARMAN & STERLING LLP  
1460 El Camino Real, 2nd Fl.  
Menlo Park, CA 94025  
Telephone: 650.838.3600  
Facsimile: 650.838.3699  
matt.berkowitz@shearman.com  
joy.wang@shearman.com

*Attorneys for Health Care Without Harm, National Council for  
Occupational Safety and Health, Consumer Federation of  
America, and Food & Water Watch*

**CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* Health Care Without Harm states that it is not publicly traded, has no parent company, and no publicly traded company owns 10% or more of its stock.

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* National Council for Occupational Safety and Health states that it is not publicly traded, has no parent company, and no publicly traded company owns 10% or more of its stock.

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* Consumer Federation of America states that it is not publicly traded, has no parent company, and no publicly traded company owns 10% or more of its stock.

Pursuant to Federal Rule of Appellate Procedure 26.1, *amicus curiae* Food & Water Watch states that it is not publicly traded, has no parent company, and no publicly traded company owns 10% or more of its stock.

Dated: December 7, 2020

Respectfully submitted,

SHEARMAN & STERLING LLP

By: /s/ Matthew G. Berkowitz  
Matthew G. Berkowitz

*Attorney for Health Care Without  
Harm, National Council for  
Occupational Safety and Health,  
Consumer Federation of America, and  
Food & Water Watch*

## **TABLE OF CONTENTS**

	<b>PAGE</b>
Statement of Compliance with Rule 29 .....	1
Interests of <i>Amici Curiae</i> .....	1
I.    Health Care Without Harm .....	1
II.   National Council for Occupational Safety and Health.....	2
III.  Consumer Federation of America .....	2
IV.   Food & Water Watch .....	4
Introduction .....	5
Argument.....	7
I.    California Is Entitled to Promulgate Non-Discriminatory Standards Affecting Public Health and Safety, as Well as Animal Cruelty, Without Being Second Guessed by Courts on the Efficacy of those Standards in Achieving the Stated Goals.....	7
II.   Industrial Pork Production, A Documented Source of Infectious Disease, Poses a Profound Danger to Public Health.....	10
III.  Proposition 12 Addresses Legitimate Animal Cruelty Concerns. ....	16
IV.   The Court Should Not Limit States' Exercise of Police Powers to Protect The Health and Safety of Their Own Citizens. ....	21
V.    Appellants Complain Only of the Effects of Proposition 12 On Their Own Business, Not On the Pork Market. ....	28
VI.   Conclusion.....	28

## TABLE OF AUTHORITIES

<b>Cases</b>	<b>Page(s)</b>
<i>Ass’n des Eleveurs de Canards et d’Oies du Quebec v. Harris</i> , 729 F.3d 937 (9th Cir. 2013) .....	6, 8, 9
<i>C &amp; A Carbone, Inc. v. Clarkstown</i> , 511 U.S. 383 (1994).....	7
<i>Huron Portland Cement Co. v. Detroit</i> , 362 U.S. 440 (1960).....	8
<i>McKiver v. Murphy-Brown</i> , LLC, No. 19-1019, ---F.3d---, 2020 WL 6787917 (4th Cir. Nov. 19, 2020) (Wilkinson, J., concurring).....	passim
<i>New State Ice Co. v. Liebmann</i> , 285 U.S. 262 (1932) (Brandeis, J. dissenting) .....	21, 22
<i>Pac. Nw. Venison Producers v. Smitch</i> , 20 F.3d 1008 (9th Cir. 1994) .....	6, 9
<i>U.S. v. Lopez</i> , 514 U.S. 549 (1995).....	22
 <b>Statutes</b>	
Cal. Health & Safety Code § 25982.....	5
 <b>Other Authorities</b>	
<i>About Antibiotic Resistance</i> , Ctrs. For Disease Control & Prevention, <a href="https://www.cdc.gov/drugresistance/about.html">https://www.cdc.gov/drugresistance/about.html</a> (last accessed Dec. 2, 2020) .....	14
Almond Leaf Scorch, UC IPM (Aug. 2017), <a href="https://www2.ipm.ucanr.edu/agriculture/almond/Almond-Leaf-Scorch/">https://www2.ipm.ucanr.edu/agriculture/almond/Almond-Leaf- Scorch/</a> .....	27
Am. Hist. Documents 1000-1904, 43 Harv. Classics 66, 79 (C. Eliot ed. 1910) .....	8

<i>Animal Feeding Operations</i> , U.S. Dep’t Agric., <a href="https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsani&lt;br/&gt;mals/livestock/afo/">https://www.nrcs.usda.gov/wps/portal/nrcs/main/national/plantsani mals/livestock/afo/</a> (last accessed Dec. 4, 2020) .....	11
<i>Antimicrobial resistance</i> , World Health Org. (Jul. 27, 2017), <a href="https://www.who.int/news-room/q-a-detail/antimicrobial-&lt;br/&gt;resistance">https://www.who.int/news-room/q-a-detail/antimicrobial- resistance</a> .....	14
Dana Cole, Lori Todd, & Steve Wing, <i>Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects</i> , 108 <i>Envtl. Health Perspectives</i> 685 (2000) available at <a href="https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1638284/">https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1638284/</a> .....	<i>passim</i>
Doris Lin, <i>Learn Why Some Activists Are Avidly Against Eating Veal</i> , ThoughtCo. (July 18, 2019), <a href="https://www.thoughtco.com/whats-&lt;br/&gt;wrong-with-veal-127519">https://www.thoughtco.com/whats- wrong-with-veal-127519</a> .....	20
Dylan Mathews, <i>America’s largest pork producer pledged to make its meat more humane. An investigation says it didn’t.</i> , Vox (May 8, 2018, 12:30PM ET), <a href="https://tinyurl.com/y5j2hmd3">https://tinyurl.com/y5j2hmd3</a> .....	16
Federal Rule of Appellate Procedure 29(a)(2) .....	1
Food & Water Watch, <i>Antibiotic Resistance 101</i> (Mar. 6, 2015) available at <a href="https://www.foodandwaterwatch.org/&lt;br/&gt;insight/antibiotic-resistance-101">https://www.foodandwaterwatch.org/ insight/antibiotic-resistance-101</a> .....	13, 14, 15
Food & Water Watch, <i>Factory Farm Nation: 2020 Edition</i> (April 2020) available at <a href="https://www.foodandwaterwatch.org/&lt;br/&gt;insight/factory-farm-nation-2020-edition">https://www.foodandwaterwatch.org/ insight/factory-farm-nation-2020-edition</a> .....	11, 28
<i>H1N1 Flu</i> , Ctrs. For Disease Control & Prevention (Nov. 25, 2009), <a href="https://www.cdc.gov/h1n1flu/information_h1n1_virus_qa.htm">https://www.cdc.gov/h1n1flu/information_h1n1_virus_qa.htm</a> .....	12
Harvard Animal L. & Pol’y Program, <i>Legislative Analysis of H.R. 4879: the “Protect Interstate Commerce Act of 2018”</i> at 37-38 (2018) available at <a href="http://hlsalpp.wpengine.com/what-we-do/&lt;br/&gt;projects/king-amendment/">http://hlsalpp.wpengine.com/what-we-do/ projects/king-amendment/</a> .....	24, 25, 26, 27

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.