

FOR PUBLICATION

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

NATIONAL PORK PRODUCERS
COUNCIL; AMERICAN FARM BUREAU
FEDERATION,

Plaintiffs-Appellants,

v.

KAREN ROSS, in her official capacity
as Secretary of the California
Department of Food & Agriculture;
TOMÁS J. ARAGÓN, in his official
capacity as Director of the California
Department of Public Health; ROB
BONTA,* in his official capacity as
Attorney General of California,

Defendants-Appellees,

and

THE HUMANE SOCIETY OF THE
UNITED STATES; ANIMAL LEGAL
DEFENSE FUND; ANIMAL EQUALITY;
THE HUMANE LEAGUE; FARM
SANCTUARY; COMPASSION IN

No. 20-55631

D.C. No.
3:19-cv-02324-
W-AHG

OPINION

* Rob Bonta is substituted for his predecessor, Xavier Becerra, as Attorney General of California; and Tomás J. Aragón is substituted for his predecessor, Sonia Angell, as Director of the California Department of Public Health. Fed. R. App. 43(c)(2).

2 NATIONAL PORK PRODUCERS COUNCIL V. ROSS

WORLD FARMING USA;
COMPASSION OVER KILLING,
Intervenor-Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of California
Thomas J. Whelan, District Judge, Presiding

Argued and Submitted April 14, 2021
Pasadena, California

Filed July 28, 2021

Before: Milan D. Smith, Jr. and Sandra S. Ikuta, Circuit
Judges, and John E. Steele, ** District Judge.

Opinion by Judge Ikuta

** The Honorable John E. Steele, United States District Judge for the
Middle District of Florida, sitting by designation.

SUMMARY***

Constitutional Law

The panel affirmed the district court's dismissal for failure to state a claim of an action filed by the National Pork Producers Council and the American Farm Bureau Federation, seeking declaratory and injunctive relief on the ground that California's Proposition 12 violates the dormant Commerce Clause in banning the sale of whole pork meat (no matter where produced) from animals confined in a manner inconsistent with California standards.

The panel held that the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause by compelling out-of-state producers to change their operations to meet California standards and thus impermissibly regulating extraterritorial conduct outside of California's borders. First, Proposition 12 does not dictate the price of a product and does not tie the price of in-state products to out-of-state prices. Further, the interconnected nature of the pork industry does not mean that Proposition 12's extraterritorial impact violates the underlying principles of the dormant Commerce Clause. The panel held that the complaint plausibly alleged that Proposition 12 has an indirect practical effect on how pork is produced and sold outside California, but such upstream effects do not violate the dormant Commerce Clause. The panel also held that California's promulgation of regulations to implement Proposition 12, which, as a practical matter, may result in the

*** This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

4 NATIONAL PORK PRODUCERS COUNCIL V. ROSS

imposition of complex compliance requirements on out-of-state farmers, does not have an impermissible extraterritorial effect.

The panel further held that the complaint did not plausibly plead that Proposition 12 violates the dormant Commerce Clause by imposing excessive burdens on interstate commerce without advancing any legitimate local interest. The panel concluded that alleged cost increases to market participants and customers did not qualify as a substantial burden to interstate commerce for purposes of the dormant Commerce Clause.

COUNSEL

Timothy S. Bishop (argued) and Brett E. Legner, Mayer Brown LLP, Chicago, Illinois; Dan Himmelfarb and Colleen M. Campbell, Mayer Brown LLP, Washington, D.C.; Travis Cushman, American Farm Bureau Federation, Washington, D.C.; Michael C. Formica, National Pork Producers Council, Washington, D.C.; for Plaintiffs-Appellants.

R. Matthew Wise (argued), Deputy Attorney General; Mark R. Beckington, Supervising Deputy Attorney General; Thomas S. Patterson, Senior Assistant Attorney General; Attorney General's Office, Sacramento, California; for Defendants-Appellees.

Bruce A. Wagman (argued), Riley Safer Holmes & Cancila LLP, San Francisco, California; Rebecca A. Cary and Ralph E. Henry, Humane Society of the United States, Washington, D.C.; for Intervenor-Defendants-Appellees.

Catherine E. Stetson and Danielle Desaulniers Stempel, Hogan Lovells US LLP, Washington, D.C.; Patrick Hedren and Erica Klenicki, Manufacturers' Center for Legal Action, Washington, D.C.; Stephen P. Lehotsky and Jonathan D. Urick, U.S. Chamber Litigation Center, Washington, D.C.; Stephanie K. Harris, FMI—The Food Industry Association, Arlington, Virginia; Scott Yager, National Cattlemen's Beef Association, Washington, D.C.; Katie Sweeney, National Mining Association, Washington, D.C.; for Amici Curiae National Association of Manufacturers, Chamber of Commerce of the United States of America, FMI—The Food Industry Association, National Cattlemen's Beef Association, and National Mining Association.

Curtis T. Hill Jr., Attorney General; Thomas M. Fisher, Solicitor General; Kian J. Hudson, Deputy Solicitor General; Julia C. Payne, Deputy Attorney General; Office of the Attorney General, Indianapolis, Indiana; Steven Marshall, Alabama Attorney General; Clyde Sniffen Jr., Alaska Attorney General; Leslie Rutledge, Arkansas Attorney General; Christopher M. Carr, Georgia Attorney General; Tom Miller, Iowa Attorney General; Derek Schmidt, Kansas Attorney General; Jeff Landry, Louisiana Attorney General; Eric Schmitt, Missouri Attorney General; Timothy C. Fox, Montana Attorney General; Doug Peterson, Nebraska Attorney General; Wayne Stenehjem, North Dakota Attorney General; Dave Yost, Ohio Attorney General; Mike Hunter, Oklahoma Attorney General; Alan Wilson, South Carolina Attorney General; Jason R. Ravensborg, South Dakota Attorney General; Ken Paxton, Texas Attorney General; Sean D. Reyes, Utah Attorney General; Patrick Morrissey, West Virginia Attorney General; Bridget Hill, Wyoming Attorney General; for Amici Curiae Indiana, Alabama, Alaska, Arkansas, Georgia, Iowa, Kansas, Louisiana, Missouri,

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.