

April 2022

The Honorable Joseph R. Biden  
President  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

The Honorable Elizabeth Prelogar  
Solicitor General  
950 Pennsylvania Ave., N.W.  
Washington, D.C. 20530

The Honorable Thomas J. Vilsack  
Secretary  
U.S. Department of Agriculture  
1400 Independence Avenue, SW  
Washington, DC 20250

Dear President Biden, Solicitor General Prelogar, and Secretary Vilsack:

As you know, the Supreme Court of the United States recently granted certiorari in *Natl. Pork Producers Council v. Ross*, which challenges the constitutionality of California's Proposition 12. The Trump administration supported the pork industry petitioners due to a misunderstanding of the purpose of this important law and filed an amicus brief ("DOJ Brief") in support of striking down Proposition 12 as unconstitutional. We urge you to please reconsider and correct this error. The sweep of laws under threat by the legal position put forward by the Trump administration is vast. If this view of the Commerce Clause of the U.S. Constitution is adopted by the Court, just a small sample of legislation that could be subverted include laws that focus on harms originating from out-of-state actors, including those addressing wildlife protection, climate change, renewable energy, deforestation, food safety, and child and forced labor. Accordingly, the undersigned groups write to respectfully ask your administration to support Proposition 12, which promotes food safety, public health and animal welfare.

**Background on Proposition 12 and *Natl. Pork Producers Council v. Ross*:**

Driven by demand from consumers, food corporations, and the farming community, multiple states have enacted humane standards for the production and sale of animal food products. As noted by the United States District Court for the Central District of California, "Proposition 12 is intended 'to prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers, and increase the risk of foodborne illness.'" *N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014, 1019 (C.D. Cal. 2019). The Obama administration took no position on Proposition 12 and similar state laws, and in 2018 the Trump administration filed a brief in the U.S. Supreme Court arguing that California's farm animal welfare laws "do not discriminate against interstate commerce." The Supreme Court declined review in 2018, but a new challenge was filed in 2019 making virtually identical Commerce Clause-related arguments. However, the Trump administration—in a seeming misperception of the purpose underlying Proposition 12—reversed position, and filed the DOJ brief in the 9th U.S. Circuit Court of Appeals arguing that such California laws *do* violate the Commerce Clause.

**The Trump administration position supports stripping state authority.**

The Trump administration's briefs argue for a narrow interpretation of states' rights and seek to limit states' ability to legislate. They advance a theory that, if accepted, could prevent a state from regulating a sale within its borders of any product made in another state, no matter how hazardous the product or unacceptable the production process. It could also prevent states from regulating professions and services within their borders.

**The legal position articulated in the DOJ brief, if adopted, is dangerous and far-reaching, and risks wiping out a host of public protections.**

It's crucial that states' ability to mitigate the harms to animals, people, and the environment caused by industrial agriculture not be eroded. If the Court were to adopt the theory of the DOJ brief, many other state laws would be in jeopardy, including: renewable energy mandates, climate laws, mandatory recycled content laws, as well as sales bans on wildlife and wildlife parts, products made with child and forced labor, stolen art, and products created through deforestation.

**The DOJ brief would reverse decades of federalism and constitutional law precedent.**

Because the Tenth Amendment of the Constitution provides that powers not delegated to the federal government are reserved to the States, the U.S. Supreme Court has long recognized the broad latitude of states to enact laws that protect public health, safety, and welfare by regulating the sale of goods and services within state borders. *See Maine v. Taylor*, 477 U.S. 131, 151 (1986); *Southern Pac. Co. v. Arizona ex rel. Sullivan*, 325 U.S. 761, 767 (1945). Proposition 12 sought to do just that (as stated in its Purpose), and mandates that food products that present a risk to "the health and safety of California consumers, and increase the risk of foodborne illness" are not sold in in the California marketplace. The Trump administration's position directly undermines the above controlling precedent that preserves the states' power to serve as laboratories of democracy, where they can advance new policies to protect their citizens. By trying to deny states the power to protect the health, safety and welfare of their citizens, the DOJ brief tramples upon the fundamental principles of federalism that have guided our nation since its founding.

**Multiple lawmakers have urged the Biden administration to support Proposition 12.**

Lawmakers across the country have sent letters asking the Biden administration to support Proposition 12, including:

- **U.S. Senators:** Dianne Feinstein, Alex Padilla, and Cory Booker ([link to letter led by Sen. Feinstein](#))
- **U.S. Representatives:** Nanette Diaz Barragán, Karen Bass, Julia Brownley, Salud Carbajal, Tony Cárdenas, Judy Chu, Lou Correa, Mark DeSaulnier, Anna Eshoo, Jared Huffman, Barbara Lee, Alan Lowenthal, Doris Matsui, Jerry McNerney, Grace Napolitano, Jimmy Panetta, Scott Peters, Lucille Roybal-Allard, Brad Sherman, Jackie Speier, Eric Swalwell, Mark Takano, Norma Torres, Juan Vargas, Kim Schrier, Marilyn Strickland, Andy Levin, Adam Smith, William Keating, Dina Titus, James McGovern, Earl Blumenauer, Susan DelBene, Stephen Lynch, Derek Kilmer, Joe Neguse and Jason Crow (links to letters led by [Rep. Schrier](#) and [Rep. Neguse](#))
- **Colorado Governor** Jared Polis ([link to letter from Gov. Polis](#))

**We urge you to reject the massive federal overreach suggested by the DOJ brief, and kindly ask that your administration assess Proposition 12 given the measure's stated purpose and support this critical law.**

Thank you for your consideration.

Sincerely,

**Agriculture and Labor**

American Grassfed Association  
American Indian Mothers, Inc.  
Americans for Family Farmers  
Change Food  
Community Farm Alliance  
Dakota Rural Action  
Fair Farms Maryland  
Family Farm Action  
Family Farm Defenders  
Farm and Ranch Freedom Alliance

Farm Forward  
Farmworker Association of Florida  
Food Animal Concerns Trust (FACT)  
Food Chain Workers Alliance  
Food for Maine's Future  
Food Policy Council of San Antonio  
Friends of Family Farmers  
HEAL (Health, Environment, Agriculture, Labor) Food Alliance  
Indiana Farmers Union  
Institute for Agriculture and Trade Policy  
Iowa Farmers Union

Iowa Organic Association  
Jefferson County Farmers & Neighbors, Inc.  
Local Matters  
National Family Farm Coalition  
National Organic Coalition  
Northeast Organic Dairy Producers Alliance  
Northeast Organic Farming Association-Interstate Council  
Ohio Sustainable Business Council  
Organic Farmers' Agency for Relationship Marketing, Inc.  
Organic Farmers Association  
Organizacion en California de Lideres Campesinas, Inc.  
Rural Coalition  
Rural Vermont  
Socially Responsible Agricultural Project  
Sustain LA  
Sustainable Food Center  
The Cornucopia Institute  
United Farm Workers  
United Food and Commercial Workers International  
Union (UFCW)  
Virginia Association for Biological Farming  
West Virginia Food & Farm Coalition  
Women, Food and Agriculture Network

#### **Animal Protection**

American Society for the Prevention of Cruelty to  
Animals (ASPCA)  
Animal Equality  
Animal Legal Defense Fund  
Animal Outlook  
Animal Protection League of New Jersey  
Animal Rescue League of Boston  
Animal Welfare Institute  
Attorneys for Animals  
Compassion in World Farming  
Encompass  
Farm Sanctuary  
Harvard Animal Law & Policy Clinic  
Humane Rescue Alliance  
Humane Society Legislative Fund  
Humane Society Veterinary Medical Association  
League of Humane Voters of New Jersey  
Massachusetts Society for the Prevention of Cruelty to Animals

Mercy for Animals  
One Step for Animals  
St. Francis Alliance  
St. Hubert's Animal Welfare Center  
The Humane League  
The Humane Society of the United States

#### **Consumer/Food Safety/Public Health**

Californians for Pesticide Reform  
Center for Food Safety  
Consumer Federation of America  
Food & Water Watch  
Health Care Without Harm  
Iowa Citizens for Community Improvement  
Johns Hopkins Center for a Livable Future  
National Consumers League  
National Council for Occupational Health and Safety  
Organic Consumers Association  
Physicians Committee for Responsible Medicine  
Public Citizen  
U.S. PIRG

#### **Environmental**

Center for Biological Diversity  
Citizen Power  
Connecticut League of Conservation Voters  
Crawford Stewardship Project  
Earthjustice  
Endangered Habitats League  
Endangered Species Coalition  
Environment America  
Environmental Law & Policy Center  
Environmental Working Group  
Friends of the Earth  
Hoosier Environmental Council  
Illinois Coalition for Clean Air & Water  
League of Conservation Voters  
Missouri Coalition for the Environment  
Northwest Atlantic Marine Alliance  
Pesticide Action Network North America  
Sierra Club  
The Xerces Society for Invertebrate Conservation