

No. 24-728

IN THE
Supreme Court of the United States

IOWA PORK PRODUCERS ASSOCIATION,
Petitioner,

v.

ROB BONTA, IN HIS OFFICIAL CAPACITY AS
ATTORNEY GENERAL OF CALIFORNIA, *et al.*,
Respondents.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

**BRIEF OF *AMICI CURIAE*
PHYLLIS SCHLAFLY EAGLES AND EAGLE
FORUM EDUCATION & LEGAL DEFENSE
FUND IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

Under the plurality opinion in *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356 (2023), the California ballot initiative Proposition 12 is allowed to impose immense and costly burdens on pig farmers in Iowa, who produce one-third of our Nation's pork.

1. Whether *Nat'l Pork Producers Council v. Ross* should be overruled for allowing one state to regulate the production of goods in another state by limiting what can be sold in the largest domestic market.
2. Whether lawmaking by direct democracy, namely ballot initiative Proposition 12 that was funded with a 30-to-1 spending advantage in California, violates the constitutional guarantee of a republican form of government for residents of another state. U.S. CONST. Art IV, Sec. 4.

TABLE OF CONTENTS

	Pages
Questions Presented.....	i
Table of Contents.....	ii
Table of Authorities	iii
Interests of <i>Amici Curiae</i>	1
Summary of Argument.....	2
Argument	4
I. The Petition Should Be Granted to Overrule <i>Nat'l Pork Producers Council</i> and Avert Worsening Conflict Among the States.....	4
II. Proposition 12 Deprives Iowans of a Republican Form of Government in Violation of the Guarantee Clause.....	8
Conclusion.....	10

TABLE OF AUTHORITIES

	Pages
Cases	
<i>Brimer v. Amash Imps., Inc.</i> , No. C11-5291 EMC, 2012 U.S. Dist. LEXIS 206730 (N.D. Cal. Jan. 10, 2012)	6
<i>Cal. Hispanic Chambers of Commerce v. Ross</i> , 2022 Cal. Super. LEXIS 8135	5
<i>Chiafalo v. Washington</i> , 591 U.S. 578 (2020)	4
<i>Consumer Def. Grp. v. Rental Hous. Indus. Members</i> , 137 Cal. App. 4th 1185, 40 Cal. Rptr. 3d 832 (2006)	6
<i>Nat'l Pork Producers Council v. Ross</i> , 598 U.S. 356 (2023)	i-ii, 3-5, 7, 10
<i>Scott v. Sandford</i> , 60 U.S. (19 How.) 393 (1857)	3
Constitution and Statutes	
U.S. CONST. Art. IV, Sec. 4	i, 1, 3, 8
Cal. Bus. & Prof. Code §§ 17202-17204	5
Cal. Bus. & Prof. Code § 17206	5
Cal. Proposition 12, the Farm Animal Confinement Initiative (2018)	ii, 2, 4-10
Cal. Proposition 65, Cal. Health & Safety Code § 25249.6	5, 6, 9
Other Authorities	
“2024 Presidential Election Live Results,” 270toWin, https://www.270towin.com/2024- election-results-live/president/	4
Robert Alt, “Ohio Pig Farmers Didn't Get a Vote on California’s Proposition 12,” <i>Wall St. Journal</i> A13 (October 7, 2022)	3-4
Tom Barton, “What they’re thinking: Iowa	

pork industry copes with California’s Prop 12, faces headwinds; U.S. pork producers experienced their worst losses in 25 years in 2023,” *The Gazette* (Cedar Rapids, Iowa) (Jul. 15, 2024)
<https://www.thegazette.com/agriculture/what-theyre-thinking-iowa-pork-industry-copes-with-californias-prop-12-faces-headwinds/>..... 5

Brief of Amicus Curiae Eagle Forum Education & Legal Defense Fund in Support of Petitioners, *Alexander v. Sandoval*, 2000 U.S. S. Ct. Briefs LEXIS 610, No. 99-1908..... 2

California Pork Producers Association, “Pork”
<https://cdn.agclassroom.org/ca/resources/fact/pork.pdf> 3

The Federalist No. 10 (James Madison) 9

[https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_\(2018\)#Campaign_finance](https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_(2018)#Campaign_finance)..... 3

Anna Massoglia, “Record-breaking federal lobbying tops \$2.2 billion in first half of 2024” (Aug. 29, 2024)
<https://www.opensecrets.org/news/2024/08/record-breaking-federal-lobbying-tops-2-billion-first-half-2024/> 8

Collin Riviello, “Why are egg prices soaring?” CBS - 7 WSPA (Greenville-Spartanburg, South Carolina) (Jan. 30, 2025) 6-7

Paul Rogers, “Proposition 12: Cage-free eggs, more room for farm animals on ballot,” *The Mercury News* (Oct. 30, 2018)
<https://www.mercurynews.com/2018/10/20/proposition-12-cage-free-eggs-more-room-for-farm-animals-on-ballot/> 6

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INTERESTS OF *AMICI CURIAE*¹

Amicus Curiae Phyllis Schlafly Eagles was founded in 2016 as an association to carry on the work of its namesake in advocacy and educational work, including defense of our republican form of government as guaranteed by the U.S. Constitution. U.S. CONST. Art. IV, Sec. 4.

¹ *Amici* file this brief after providing the requisite ten days' advance written notice to counsel for all the parties. Pursuant to Rule 37.6, counsel for *amici curiae* authored this brief in whole, no counsel for a party authored this brief in whole or in part, and no such counsel or a party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity—other than *amici*, its members, and its counsel—contributed monetarily to the preparation or submission of this brief.

Amicus Eagle Forum Education & Legal Defense Fund (“Eagle Forum ELDF”) was founded in 1981 by Phyllis Schlafly, to advance conservative educational and legal goals. Eagle Forum ELDF has filed multiple *amicus* curiae briefs in this Court and in lower appellate courts for more than two decades, including in opposition to the balkanization of our country. *See, e.g.*, Brief of Amicus Curiae Eagle Forum Education & Legal Defense Fund in Support of Petitioners, *Alexander v. Sandoval*, 2000 U.S. S. Ct. Briefs LEXIS 610, *6, No. 99-1908 (“[T]he Constitution disfavors language balkanization for the reason that it encourages secession. The former promotes the latter, as the Quebec controversy demonstrates ...”).

Amici thereby have strong interests in this Petition for a Writ of Certiorari with respect to California heavily burdening Iowa farmers by enacting a ballot initiative in California.

SUMMARY OF ARGUMENT

California ballot initiative Proposition 12, the Farm Animal Confinement Initiative (2018), is a significant divergence from Iowa and many states, which foments a worsening economic disunity that could become impossible to repair. Proposition 12 imposes enormous costs to be borne primarily by Iowa due to its heavy reliance on pig farming. Nearly one-third of all the pigs in the United States are raised in Iowa, which has less than one-tenth the population of California but 300 times as many pigs. “California makes up less than one percent of the total U.S. pork

production,”² such that its imposition of an immense regulatory burden and lawfare against pig farmers is tantamount to a significant tax on Iowans.

A descent into national disunity looms, as this issue does not end with pork. Inevitably California environmentalists and climate change opponents will seek to regulate energy production, such as oil refineries prevalent in Texas but scarce in California, based on the precedent of *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356 (2023). Before long there could be a repeat of the divisiveness of the 1850s, which was inflamed by a states’ right decision then. *Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857). Now, as then, there may not be time for the Supreme Court to seek to restore unity once States go in divergent directions.

California interest groups are free to spend their war chests on electing and lobbying legislators in Iowa and other states, which would not disrupt the constitutional guarantee to Iowans of a republican form of government. U.S. CONST. Art. IV, Sec. 4. But for merely \$13 million Californians enacted a ballot initiative there instead, outspending their opponents by 30-to-1.³ Iowans should not have to try to defeat a ballot initiative 2,000 miles away in a process of direct democracy process that Iowans reject, in order to preserve the way of life in Iowa. *See, e.g.*, Robert Alt, “Ohio Pig Farmers Didn't Get a Vote on California's

² California Pork Producers Association, “Pork” <https://cdn.agclassroom.org/ca/resources/fact/pork.pdf> (viewed Feb. 5, 2025)

³ [https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_\(2018\)#Campaign_finance](https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_(2018)#Campaign_finance) (viewed Feb. 6, 2025).

Proposition 12,” *Wall St. Journal* A13 (October 7, 2022). It violates the Guarantee Clause to allow Californians to regulate Iowans through this process.

ARGUMENT

I. The Petition Should Be Granted to Overrule *Nat’l Pork Producers Council* and Avert Worsening Conflict Among the States.

Once started, trade or cultural wars can be nearly impossible to stop, and the worsening conflicts among the States could be disastrous for national unity. Presidential elections are already highly divisive, with 70-point swings in the winning margins of the two leading candidates depending on the state,⁴ despite relatively narrow outcomes overall. Foreign wars do not bind our Nation together internally as they once did, and the sprawling population of the United States today is more than ten times that of 1860. Like the potentially disastrous faithless elector problem, it would be best for this Court to nip the disunity in the bud before it becomes a national crisis. *See, e.g., Chiafalo v. Washington*, 591 U.S. 578, 586 n.3 (2020) (resolving the issue of faithless electors despite how “[s]ince the events in this case, Washington has repealed the fine”).

This Court found insufficient that Proposition 12 compliance will “increase production costs per pig by over \$13 dollars per head, a 9.2% cost increase at the farm level.” *Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 399 (2023) (Roberts, C.J., dissenting and concurring in part). But in a low-margin business,

⁴ In 2024, President Trump won West Virginia by 42 percentage points, but lost Vermont by 32. <https://www.270towin.com/2024-election-results-live/president/> (viewed Feb. 3, 2025).

such a cost increase is the difference between remaining open or closing. In 2023, the year before Proposition 12 took effect, U.S. pork producers suffered their worst losses in a quarter century, losing \$32 per hog.⁵

As observed by a California state court, a violation of Proposition 12 constitutes unfair competition as defined in Section 17200 of the California Business and Professions Code, which vastly adds to costs being imposed on Iowa pig farmers:

By incorporating the Unfair Competition Law (UCL) in Section 17200 *et sequitur* of the Business and Professions Code, the Act authorizes private parties claiming to have lost money or property due to a prohibited sale of whole pork meat to sue for equitable relief. (See Bus. & Prof. Code §§ 17202-17204.) The UCL also empowers Bonta, district attorneys and other public prosecutors to sue and seek civil penalties. (See *id.*, §§ 17204, 17206.)

Cal. Hispanic Chambers of Commerce v. Ross, 2022 Cal. Super. LEXIS 8135, *5-6.

In this respect Proposition 12 is analogous to the notorious California Proposition 65, which compels companies to provide silly cancer warnings nationwide lest they be subjected to costly litigation that is “absurdly easy” to file in California state court.

⁵ Tom Barton, “What they’re thinking: Iowa pork industry copes with California’s Prop 12, faces headwinds; U.S. pork producers experienced their worst losses in 25 years in 2023,” *The Gazette* (Cedar Rapids, Iowa) (Jul. 15, 2024). <https://www.thegazette.com/agriculture/what-theyre-thinking-iowa-pork-industry-copes-with-californias-prop-12-faces-headwinds/> (viewed Feb. 6, 2025).

Consumer Def. Grp. v. Rental Hous. Indus. Members, 137 Cal. App. 4th 1185, 1217, 40 Cal. Rptr. 3d 832, 855 (2006) (“bringing Proposition 65 litigation is so absurdly easy”). Removal to federal court by non-California defendants of these harassing lawsuits is thwarted by clever drafting of these initiatives to keep the lawfare in state court. *Brimer v. Amash Imps., Inc.*, No. C11-5291 EMC, 2012 U.S. Dist. LEXIS 206730, at *12 (N.D. Cal. Jan. 10, 2012) (no Article III “standing in connection with similar private attorney general suits,” and thus an out-of-state defendant cannot remove to federal court). California’s pro-plaintiff-litigation ballot initiative forces residents of the 49 other states to be repeatedly peppered with unwanted disclaimers their own states never approved or required.

The president of the California Farm Bureau Federation, Jamie Johansson, declared that “[a]ll Proposition 12 does is allow trial lawyers to file predatory lawsuits against egg farmers, who provide some of the healthiest food on the planet.”⁶ California imports 60% of its eggs, and the astronomical increase in the price of eggs nationwide has been attributed in part to Proposition 12. While the bird flu has contributed to the sharp rise in egg prices, the Director of Clemson University's Agribusiness Program Team Jonathan “Kantrovich points to another factor for surging egg prices: cage-free laws,” by which he refers to Proposition 12. Collin Riviello, “Why

⁶ Paul Rogers, “Proposition 12: Cage-free eggs, more room for farm animals on ballot,” *The Mercury News* (Oct. 30, 2018), <https://www.mercurynews.com/2018/10/20/proposition-12-cage-free-eggs-more-room-for-farm-animals-on-ballot/> (viewed Jan. 24, 2025).

are egg prices soaring?” CBS - 7 WSPA (Greenville-Spartanburg, South Carolina) (Jan. 30, 2025). California ballot initiatives should not be allowed to control what residents see and pay in South Carolina, 2,500 miles away.

There is no end to the creative but harmful mischief that California activists can do under this Court’s precedent in *Nat’l Pork Producers Council*. What Proposition 12 has done to pig farmers in Iowa could next be done through the California ballot initiative process to energy producers in Texas, which has the largest number of oil refineries in the country.

While Iowa pig farmers lack the financial and political clout to compete with the California billionaires in Silicon Valley and Hollywood, Texas will surely punch back against California and once that fight starts it may become impossible for this Court to stop. *Nat’l Pork Producers Council* invites a trade war between California and other states by allowing one-sided economic impact of partisan regulation by one State against an industry located primarily in another State. Of course this Court would take notice of that fight, but this dispute between Iowa farmers and California should be equally important.

This Court mentioned that Congress, which is perennially stuck in gridlock, could intervene to adopt a national standard for pork production. Iowa pig farmers “have failed—repeatedly—to persuade Congress to use its express Commerce Clause authority to adopt a uniform rule for pork production.” *Nat’l Pork Producers Council*, 598 U.S. at 390. But the close alliance between California and the Democrat Party renders impossible the prospect of enacting any bipartisan legislation that could overcome the 60-vote

cloture rule in the U.S. Senate. Iowa farmers should have rights regardless of inaction by Congress.

II. Proposition 12 Deprives Iowans of a Republican Form of Government in Violation of the Guarantee Clause.

For a pittance of the immense lobbying costs needed to enact federal legislation by hiring K-street firms,⁷ California special interests have regulated Iowa farmers by spending merely \$13 million to enact a ballot initiative 2,000 miles away from Iowa. This is a clever political approach, but one that this Court should firmly reject as violating the Guarantee Clause.

The Guarantee Clause ensures representative government for every state. U.S. CONST. Art. IV, Sec. 4. Yet Proposition 12, enacted by a California citizen initiative process properly banned in Iowa, deprives Iowa pig farmers of their guarantee of a republican form of government for their way of life. Special interest groups in California thereby bypassed the legislative process of holding hearings and receiving testimony by affected Iowans. Proposition 12 further deprives the Iowa pig farmers of due process by subjecting them to plaintiffs' litigation in California state court, without an ability to remove the case to

⁷ An underestimate of the lobbying cost to enact new federal legislation would be \$100 million – with no guarantee of success – in light of how \$2.2 billion overall was spent on federal lobbying in merely the first half of 2024, and how it often takes multiple legislation sessions to enact new legislation. Anna Massoglia, “Record-breaking federal lobbying tops \$2.2 billion in first half of 2024” (Aug. 29, 2024)

<https://www.opensecrets.org/news/2024/08/record-breaking-federal-lobbying-tops-2-billion-first-half-2024/> (viewed Feb. 5, 2025).

federal court, similar to what Proposition 65 has done to businesses nationwide. *See supra* Point I.

The well-heeled interest groups in California that want to regulate Iowa farmers have full access to a republican political process, consistent with the U.S. Constitution, to seek their goals: participate in electing and lobbying representatives in Iowa or in Congress, who can then hold hearings and consider legislation favored by certain Californians. That process of representative government is what the Guarantee Clause requires. Instead, Proposition 12 takes an unconstitutional approach of exploiting direct democracy in California to regulate Iowans.

This ballot initiative process for law-making by Californians against Iowans runs afoul of the central principle of the Constitution as articulated by James Madison in *Federalist No. 10*: “The influence of factious leaders may kindle a flame within their particular States, but will be unable to spread a general conflagration through the other States.” *The Federalist No. 10* (James Madison). Ballot initiatives that bypass representative government “spread a general conflagration” as Proposition 12 has.

It is, indeed, unnecessary to invoke the dormant Commerce Clause to reject the misguided approach of Proposition 12 to use direct democracy in California to regulate Iowans. The Guarantee Clause prohibits lawmaking that circumvents the legislative process of representative government.

Otherwise, there will inevitably be additional future targets of California’s “factious leaders” to take aim at more out-of-state industries, such as gun manufacturing, fracking, traditional cars, and even

fur farming, all of which are industries mostly foreign to California. As the largest state and thus the biggest consumer of most goods, California should not be allowed to dictate by ballot initiative to the rest of the country how goods should be produced. California interest groups should instead abide by the Guarantee Clause and take their cause to Congress or legislatures in states where these targeted industries are primarily located. Then legislative hearings could be held and decision-making would be informed.

The admonishment by the plurality in *Nat'l Pork Producers Council* of pig farmers for having failed to enact federal legislation could be better directed at supporters of Proposition 12 who have failed to persuade either Congress or the Iowa legislature to embrace utopian requirements for raising pigs. The Guarantee Clause requires abiding by the republican process of representative government, rather than lawmaking by popular vote in California to regulate Iowans.

CONCLUSION

For the foregoing reasons and those stated in the Petition, the Court should grant the Writ of Certiorari.

Respectfully submitted,

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