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 IN OPPOSITION FOR INTERVENOR RESPONDENTS

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QUESTION PRESENTED

California voters passed Proposition 12 to prohibit the in-state sale of certain pork products from animals held in extreme forms of confinement. Proposition 12's sales regulations apply evenhandedly to pork products sold within California, without regard to where the producer is located. Producers inside California, however, must comply with Proposition 12 for all pork products they produce, whether sold within the state or elsewhere; producers outside California need comply with Proposition 12 only for pork they choose to sell within California.

Petitioner alleges that Proposition 12 violates the dormant Commerce Clause because it: (1) discriminates against out-of-state producers; and (2) imposes out-of-state burdens that are clearly excessive in comparison to the law's benefits under this Court's decision in *Pike* v. *Bruce Church*, 397 U.S. 137 (1970). The district court and court of appeals held that petitioner had not plausibly alleged that Proposition 12 discriminates in its text, purpose, or effect. Petitioner's *Pike* challenge was therefore dismissed as substantially identical to the challenge this Court rejected in *National Pork Producers Council* v. *Ross*, 598 U.S. 356 (2023).

The questions presented are:

1. Whether the courts below properly held that petitioner's complaint does not state a claim under the dormant Commerce Clause.

2. Whether a party challenging the same statute as in *Ross*, under the same constitutional provision, based on substantially identical allegations, can avoid the outcome in *Ross* by adding a conclusory and implausible assertion of discrimination.

PARTIES TO THE PROCEEDINGS BELOW

Petitioner Iowa Pork Producers Association was the plaintiff in the district court and the plaintiff-appellant in the court of appeals.

Respondents Rob Bonta, in his official capacity as Attorney General of California; Karen Ross, in her official capacity as Secretary of the California Department of Food and Agriculture; and Tomas Aragon, in his official capacity as Director of the California Department of Public Health, were the defendants in the district court and the defendants-appellees in the court of appeals.

Non-government intervenor respondents Humane World for Animals, Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, and Animal Outlook were intervenors in the district court and intervenor-defendants-appellees in the court of appeals.[1]

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[1] In February 2025, The Humane Society of the United States officially changed its name to Humane World for Animals.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, each of the intervenor respondents Humane World for Animals, Animal Legal Defense Fund, Animal Equality, The Humane League, Farm Sanctuary, Compassion in World Farming USA, and Animal Outlook states that no company owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

There are no related proceedings, within the meaning of Rule 14.1(b)(iii), beyond those identified in the petition.

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PRELIMINARY STATEMENT

Two years ago, this Court rejected a dormant Commerce Clause challenge to the law at issue here: California's Proposition 12, which bans the sale, within California, of certain pork products from animals confined in cruel and unsanitary conditions. *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356 (2023). Despite petitioner's effort to market this case as different from *Ross*, it is a retread of *Ross* in every meaningful way. According to petitioner, this case is different because petitioner's complaint includes a handful of assertions that Proposition 12 discriminates against out-of-state pork produ-

cers; the plaintiff in *Ross* did not allege discrimination. But the court of appeals *rejected* petitioner's allegations of discrimination—not because of any parsing of the various opinions in *Ross*, but because discrimination was not plausibly pleaded in the complaint. Petitioner does not dispute that discrimination claims that are not plausibly pleaded are subject to dismissal. Petitioner's allegations simply fell short of plausibly pleading discrimination here.

The petition nowhere argues that the court of appeals' complaint-specific rejection of the discrimination claim warrants this Court's review. It does not purport to identify errors in the court of appeals' plausibility analysis. It does not mention the reasons the court of appeals gave for rejecting the discrimination claims as implausible. Indeed, despite describing its discrimination allegations as the "heart" of its attempt to distinguish *Ross*, Pet. 15, petitioner omits any response to the court of appeals' reasoning at all. And this Court would be singularly unlikely to grant review of that issue in any event. This Court does not ordinarily grant review to address fact-bound challenges to the sufficiency of pleadings.

With no plausible discrimination claim in this case, the petition presents no lofty question about this Court's decision in *Ross*. It instead presents the exact issue that this Court addressed two years ago. In *Ross*, the petitioner never attempted to claim that Proposition 12 discriminates against out-of-state products. Here, petitioner attempted to do so but failed to make plausible discrimination allegations. Either way, the result is the same—both cases lack any legally cognizable discrimination claim. What is left is indistinguishable from *Ross*. Petitioner challenges the same state law as in *Ross*,

under the same constitutional provision, based on strikingly similar allegations. And the petition does not even attempt to identify a conflict among lower courts regarding how to interpret *Ross*.

Petitioner attempts to avoid the result in *Ross* by misreading that decision. Petitioner urges that a "majority of Justices" ruled that the plaintiff there had stated a claim under *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970). Pet. 19. But the opposite is true. "A majority," five Justices in all, "reject[ed] any effort to expand *Pike*'s domain to cover cases like this one." *Ross*, 598 U.S. at 389 n.4 (plurality opinion). While different Justices in the majority relied on different rationales, each concluded that the *Pike* claim should be dismissed. That result applies equally to petitioner's *Pike* claim, which challenges the same law based on the same alleged burdens.

The court of appeals' decision below also did not turn on *Marks* v. *United States*, 430 U.S. 188 (1977). No alternative approach to *Marks* would have changed the outcome. *Ross* rejected a substantively identical dormant Commerce Clause challenge to Proposition 12. Applying that decision here requires no analysis of concurring and dissenting opinions. Lacking any plausible discrimination claim, petitioner presents the same case, under the same facts, yielding the same result. If anything, events since this Court's decision have confirmed Proposition 12's constitutionality. Further review is unwarranted.

STATEMENT

I. STATUTORY FRAMEWORK

This case concerns a California law that regulates the sale of pork products within the State of California.

A. Proposition 12's Amendments to the California Health and Safety Code

"In November 2018 and with the support of about 63% of participating voters, California adopted a ballot initiative that revised the State's existing standards * * * for the in-state sale of pork." *Nat'l Pork Producers Council* v. *Ross*, 598 U.S. 356, 365 (2023); Pet. App. 102a. "Proposition 12 forbids the in-state sale of whole pork meat that comes from breeding pigs (or their immediate offspring) that are 'confined in a cruel manner.'" *Ross*, 598 U.S. at 365-366 (quoting Cal. Health & Safety Code § 25990(b)(2)); Pet. App. 146(a). A pig is "[c]onfined in a cruel manner" if confinement prevents it from "lying down, standing up, fully extending the animal's limbs, or turning around freely," or provides "less than 24 square feet of usable floorspace per pig." Cal. Health & Safety Code § 25991(e)(1) & (3) (Pet. App. 148a).

Proposition 12 was designed to "eliminate inhumane and unsafe products from * * * abused animals from the California marketplace" and "reduc[e] the risk of people being sickened by food poisoning" associated with unsanitary crowding. Official Voter Information Guide, California General Election 70 (Nov. 6, 2018), https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf. In the words of Proposition 12 itself, the law bans, solely within California, the sale of certain pork products produced through "extreme methods of farm animal confinement" that are not merely cruel, but "also threaten the health and safety of California consumers, and increase the risk of foodborne illness and associated negative fiscal impacts on the State of California." Prop. 12 § 2.

Proposition 12 took effect in part on December 2018, but its square footage standard was originally slated to take effect three years after enactment. Pet. App. 96a.

That effective date was later postponed by a ruling of the California Superior Court, Pet. App. 25a-26a, and then further delayed by the California Department of Food and Agriculture, which agreed not to enforce the law's full standards on in-state sales until after December 31, 2023, see Joint Stipulation of All Parties, *Cal. Hisp. Chambers of Commerce* v. *Ross*, No. 34-2021-80003765 (Cal. Super. Ct. June 16, 2023), available at www.cdfa.ca.gov/AHFSS/AnimalCare/docs/20230616_order_re_further_limited_extension_of_injunction.pdf.

B. Prior Legislation

More than 16 years ago, in November 2008, California voters passed a ballot initiative related to farm animal confinement conditions. That initiative, Proposition 2, "prohibit[ed] the cruel confinement of farm animals" within California. Prop. 2, §2 (codified Cal. Health & Safety Code §§25990-25994) (Jan. 1, 2015). Proposition 2 required California producers to provide confined sows, veal calves, and egg-laying hens sufficient room to turn around in their pens, but did not impose any square footage standard. Cal. Health & Safety Code §25990 (Jan. 1, 2015); Pet. App. 96a. It became effective on January 1, 2015, giving California producers approximately six years to comply. Pet. App. 96a.

II. THIS COURT'S DECISION SUSTAINING PROPOSITION 12

A. Prior Challenges in the Lower Courts

Proposition 12 was first challenged on dormant Commerce Clause grounds by the North American Meat Institute ("NAMI"). See *N. Am. Meat Inst.* v. *Becerra*, 420 F. Supp. 3d 1014, 1017 (C.D. Cal. 2019), *aff'd*, 825 F. App'x 518 (9th Cir. 2020). NAMI sought a preliminary injunction. *Ibid.* It argued that Proposition 12 violated the dormant Commerce Clause because, among other alleged deficiencies, Proposition 12 had the discrimina-

tory purpose of leveling the playing field between in-state and out-of-state producers. *Id.* at 1024-1025. NAMI also alleged a discriminatory effect because Proposition 12 gave out-of-state producers less "'lead time'" to comply with certain confinement standards than Proposition 2 had given California producers. *Id.* at 1025-1029.

The district court found no likelihood of success on the merits. *N. Am. Meat Inst.*, 420 F. Supp. 3d at 1024-1028. NAMI offered no evidence from the "initiative campaign or the California Voter's Information Guide" that Proposition 12 had a discriminatory purpose. *Id.* at 1025. Nor was the district court "persuaded" by NAMI's argument that out-of-state producers "*may*, in some respects, have less 'lead time'" because California had not yet issued regulations concerning Proposition 12's standards. *Id.* at 1028. The court of appeals affirmed, finding no abuse of discretion in the district court's determination that "Proposition 12 is not facially discriminatory," "does not have a discriminatory purpose," and "does not have a discriminatory effect." *N. Am. Meat Inst.*, 825 F. App'x at 519. This Court denied NAMI's petition for a writ of certiorari. *N. Am. Meat Inst.* v. *Bonta*, 141 S. Ct. 2854 (2021).

After the district court denied NAMI's motion for a preliminary injunction, the National Pork Producers Council and the American Farm Bureau (collectively "NPPC"), sued to challenge Proposition 12 under the dormant Commerce Clause. *Nat'l Pork Producers Council* v. *Ross*, 456 F. Supp. 3d 1201, 1204 (S.D. Cal. 2020). Unlike NAMI, NPPC did not allege that Proposition 12 discriminated against out-of-state producers. It argued that the law had impermissible extraterritorial effects. *Id.* at 1207. And it urged that Proposition 12 is invalid under *Pike* v. *Bruce Church, Inc.*, 397 U.S. 137 (1970),

because (according to NPPC) the law imposes a burden on interstate commerce that is "'clearly excessive in relation to the putative local benefit.'" *Nat'l Pork Producers Council*, 456 F. Supp. 3d at 1208 (quoting *Pike*, 397 U.S. at 142). Proposition 12, NPPC urged, imposed "substantial costs on out-of-state producers," and the putative benefits to animal welfare and public health were "illusory." *Id.* at 1209-1210. The district court rejected NPPC's contentions on the pleadings. *Ibid.* And the court of appeals affirmed. *Nat'l Pork Producers Council* v. *Ross*, 6 F.4th 1021 (9th Cir. 2021) ("*NPPC I*").

B. This Court's Decision in *Ross*

Following the court of appeals' ruling in *NPPC I*, this Court granted review and affirmed. *Ross*, 598 U.S. at 363. The Court "unanimously disavow[ed]" NPPC's challenge based on Proposition 12's "extraterritorial effects." *Id.* at 389 n.4 (plurality opinion). "In our interconnected national marketplace," the Court explained, "many (maybe most) state laws have the 'practical effect of controlling' extraterritorial behavior." *Id.* at 374.

"A majority also reject[ed] any effort to expand *Pike*'s domain to cover cases like this one," albeit for different reasons. *Ross*, 598 U.S. at 389 n.4 (plurality opinion). The Court explained that, under *Pike*, courts balance the "'burden'" a state statute imposes on "'[interstate] commerce'" against its "'putative local benefits,'" asking whether the former is "'clearly excessive in relation'" to the latter. *Id.* at 377. Justices Gorsuch, Thomas, and Barrett concluded that such balancing was not possible for Proposition 12 because that law's "many noneconomic" benefits were "incommensurable" to—and thus could not be balanced against—the economic burdens of which NPPC complained. *Id.* at 381-382 (plurality opinion).

Justices Gorsuch, Thomas, Sotomayor, and Kagan separately concluded that NPPC had failed "as a matter of law to demonstrate a substantial burden on interstate commerce," concededly a requirement for a *Pike* claim. *Ross*, 598 U.S. at 383 (plurality opinion). They observed that Proposition 12 gave some "out-of-state competitors" an opportunity to "enhance their own profits." *Id.* at 385 (plurality opinion). *Amici* noted that Proposition 12 helped smaller out-of-state pork producers "compete with vertically integrated firms," and separately noted that even vertically integrated firms had also "begun to modify" or "indicated their intention to modify" their "operations to comply with Proposition 12." *Id.* at 385 n.3 (plurality opinion).

After this Court affirmed the dismissal of NPPC's complaint, NAMI voluntarily dismissed its complaint. *N. Am. Meat Inst.* v. *Becerra*, No. 2:19-cv-08569 (C.D. Cal. June 15, 2023), ECF No. 83.

III. PROCEEDINGS BELOW

Three years after Proposition 12 passed, and long after NAMI and NPPC filed their complaints, petitioner filed this case, a third challenge to Proposition 12 under the dormant Commerce Clause.[1] Like NAMI's complaint, petitioner's amended complaint alleged that Proposition 12 had a discriminatory effect. Although Proposition 12

[1] Petitioner first filed in Iowa in May 2021, but that case was dismissed for lack of personal jurisdiction. *Iowa Pork Producers Ass'n* v. *Bonta*, Case No. 3:21-cv-3018, 2021 WL 4465968, at *13 (N.D. Iowa Aug. 23, 2021). Petitioner then refiled in November in California state court, but the case was removed to federal court and transferred to the Central District of California. *Iowa Pork Producers Ass'n* v. *Bonta*, No. 2:21-cv-09940 (C.D. Cal. Nov. 16, 2021), ECF No. 1.

applies the same standards to all in-state sales, petitioner urged that in-state producers "had been on notice" of certain standards since 2008, when California enacted Proposition 2. Pet. App. 133a. Petitioner further alleged that Proposition 12 had a "discriminatory purpose" because it sought to "avoid negative fiscal impacts" associated with Proposition 2's effects on local production. Pet. App. 133a-134a.

Petitioner also repeated NPPC's assertion that Proposition 12 had impermissible extraterritorial effects and improperly burdened interstate commerce. Like NPPC's complaint, petitioner's amended complaint alleged that Proposition 12 violated the dormant Commerce Clause by "directly regulat[ing] extraterritorial conduct wholly outside of California." Pet. App. 134a-135a. And like NPPC's complaint, petitioner's complaint alleged that Proposition 12's "burdens on commerce, which impact all stages of the pork production market, clearly outweigh any local benefit." Pet. App. 135a.

Intervenor Respondents Humane World for Animals (formerly The Humane Society of the United States), Animal Legal Defense Fund, Animal Equality, the Humane League, Farm Sanctuary, Compassion in World Farming USA, and Animal Outlook (collectively, "Intervenors"), intervened in petitioner's case to defend Proposition 12. Pet. App. 67a.

A. The District Court Dismisses Petitioner's Complaint

Petitioner moved for a preliminary injunction and respondents—the State of California and Intervenors—cross-moved to dismiss and for judgment on the pleadings, respectively. Pet. App. 20a; *Iowa Pork Producers Ass'n* v. *Bonta*, No. 2:21-cv-09940 (C.D. Cal. Nov. 16, 2021), ECF No. 66-11. The district court denied petition-

er's motion and granted the motion to dismiss. Pet. App. 18a-92a.

The district court rejected the allegations of discrimination as insufficient. Petitioner, it began, "cannot plausibly state a claim that Proposition 12 is facially discriminatory, because it makes no distinction between in-state and out-of-state pork producers." Pet. App. 47a. Petitioner "failed to plausibly allege that the purpose of Proposition 12, which the statute states is 'to prevent animal cruelty by phasing out extreme methods of farm animal confinement,' was motivated by economic protectionism." *Ibid.* Finally, petitioner could not plausibly claim that Proposition 2, "a different law, passed ten years earlier," caused Proposition 12 to have a "discriminatory effect." Pet. App. 48a. In-state producers' compliance with Proposition 2 did not render Proposition 12 discriminatory, because even the absence of "'comparable in-state businesses'" would not suffice to meet petitioner's burden. Pet. App. 48a-49a (quoting *Ass'n des Eleveurs de Canards et d'Oies du Quebec* v. *Harris*, 729 F.3d 937, 947 (9th Cir. 2013)). The district court also rejected petitioner's arguments about extraterritoriality and burdens on interstate commerce. Pet. App. 50a-52a.

B. The Court of Appeals Affirms

The court of appeals stayed briefing pending this Court's decision in *National Pork Producers Council* v. *Ross*. See *Iowa Pork Producers Ass'n* v. *Bonta*, No. 22-55336 (9th Cir. May 26, 2022), ECF No. 11. Following issuance of this Court's decision, the court of appeals affirmed the district court's dismissal of petitioner's complaint. Pet. App. 1a-11a.

1. The court of appeals began with petitioner's assertion that Proposition 12 is discriminatory. The com-

plaint, it held, "did not adequately allege discrimination under the dormant Commerce Clause." Pet. App. 5a. "On its face, Proposition 12 does not discriminate against out-of-state pork producers." Pet.App. 2a. Nor had petitioner "adequately alleged that Proposition 12 has a discriminatory purpose." Pet. App. 3a. While petitioner invoked California's concerns about "negative fiscal impacts," the text of Proposition 12 showed the feared impacts were those "associated" with increased "risk of foodborne illness," not competition with out-of-state producers. *Ibid.*

Petitioner likewise failed to plausibly allege "discriminatory effects." Pet. App. 4a. "Contrary to [petitioner's] characterization, Proposition 12 did not extend the provisions of Proposition 2 to out-of-state producers." *Ibid.* In-state producers had to comply with Proposition 2 "regardless of where pork * * * might ultimately be sold." *Ibid.* Out-of-state producers, in contrast, needed to comply with Proposition 12 only for meat they chose to sell in California. *Ibid.* That in-state producers "may have felt less impact from Proposition 12" did not demonstrate discrimination. Pet. App. 5a.

The court of appeals upheld the district court's determination that petitioner had failed to state a claim under *Pike*. Pet. App. 5a-8a. It observed that this Court's decision in *Ross* had deemed NPPC's challenge "'well outside *Pike*'s heartland.'" Pet. App. 6a. While this Court had not agreed on a "single rationale" in *Ross*, the court of appeals recognized that the "'specific result [in *Ross*] is binding on lower federal courts.'" *Ibid.* (quoting *United States* v. *Davis*, 825 F.3d 1014, 1022 (9th Cir. 2016) (en banc)). Petitioner, moreover, conceded that the court of appeals' own prior decision in *NPPC I* dismissing the *Pike* claim there remained binding; accordingly, the

court of appeals looked to its own decision. Pet. App. 6a & n.4; Pet. App. 12a. And petitioner, like NPPC before it, primarily alleged that "complying with Proposition 12 will require costly alterations to its infrastructure and substantial new training and labor." Pet. App. 7a. Because petitioner challenged the same law as NPPC, recycling the same rationales, the same result—dismissal of the *Pike* claim—was appropriate. Pet. App. 7a-8a.

REASONS FOR DENYING THE PETITION

Petitioner identifies no conflict in the circuits on any issue warranting this Court's review. To the contrary, petitioner admits that this Court addressed whether the very law it seeks to challenge—California's Proposition 12—violates the dormant Commerce Clause in *National Pork Producers Council* v. *Ross*. According to petitioner, this case is different from *Ross* because petitioner's "core claim expressly alleges that Proposition 12 is discriminatory." Pet. 3. But the district court and court of appeals both found that the complaint did not plausibly plead discrimination. The petition does not purport to identify any error in those courts' reasons for finding discrimination not plausibly pleaded; it does not mention the courts' rationales at all. Nor does the petition urge that the sufficiency of its complaint—whether the asserted facts plausibly allege discrimination against out-of-state commerce—warrants this Court's review. It does not: Any such challenge would be precisely the sort of fact-bound dispute that is uncertworthy in the extreme.

Absent a plausible claim that Proposition 12 is discriminatory, the petition is left to retread ground this Court thoroughly addressed in *Ross* just two years ago. Petitioner challenges the exact same law, under the exact same constitutional provision, on virtually indistinguishable grounds. Petitioner's invocation of *Marks* cannot

change the analysis, as no interpretation of concurring and dissenting opinions is necessary to understand that the outcome of this Court's opinion in *Ross* is binding in this case.

I. THE PETITION'S DORMANT COMMERCE CLAUSE CHALLENGE DOES NOT WARRANT REVIEW

Petitioner attempts to distinguish this case from *Ross* based on the complaint's assertion that Proposition 12 discriminates against out-of-state producers. But that presents no significant legal issue warranting review. The court of appeals agreed that, as a legal matter, a discriminatory statute would be "unconstitutional" under the dormant Commerce Clause. Pet. App. 2a. But both the district court and the court of appeals found, based on their review of the complaint, that petitioner had not plausibly alleged discrimination. The petition does not substantively respond to that fact-bound determination. It does not urge this Court to review the plausibility of its discrimination claims. Nor does it explain why it believes those courts both erred in finding the claims implausible. And any challenge to the lower courts' fact-bound plausibility determinations would not warrant this Court's review, and would be meritless, in any event. Absent a plausible allegation of discrimination, the petition raises the same issue this Court already decided in *Ross*. Review is unwarranted.

A. This Case Presents No Unresolved Issue Under the Dormant Commerce Clause

This Court grants review only for "compelling reasons," which are "rarely" present "when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. The petition does not urge that the decision below creates a division in circuit authority on the scope of the dor-

mant Commerce Clause. It does not assert that the court of appeals created such a conflict when it ruled that petitioner failed to plausibly allege that Proposition 12 is discriminatory. The petition does not even address the reasons the courts below gave when finding the claim of discrimination not plausibly alleged. And that analysis is inherently fact-bound. It presents no issue warranting review.

1. The petition urges that the dormant Commerce Clause "'prohibits the enforcement of state laws driven by * * * economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.'" Pet. 14 (quoting *N.J. Staffing All.* v. *Fais*, 110 F.4th 201, 205 (3d Cir. 2024)). But the court of appeals agreed with and applied that legal standard. Pet. App. 2a. It stated that, "'[i]f a statute discriminates against out-of-state entities on its face, in its purpose, or in its practical effect, it is unconstitutional * * * .'" *Ibid.* (quoting *Rocky Mountain Farmers Union* v. *Corey*, 730 F.3d 1070, 1087 (9th Cir. 2013)). The petition does not address the court of appeals' articulation of the legal standard, let alone identify any error in it.

The petition instead emphasizes that the complaint in this case asserts that Proposition 12 is discriminatory, urging that the court of appeals "turned a blind eye" to those allegations. Pet. 15-16. Far from it. The court of appeals devoted pages—nearly half its opinion—to addressing the complaint's assertions about discrimination and found they did not plausibly allege facial discrimination, discriminatory intent, or discriminatory effect. Pet. App. 2a-5a. Like the district court before it, the court of appeals found that the complaint simply "did not adequately allege discrimination under the dormant

Commerce Clause." Pet. App. 5a. The petition nowhere addresses that determination. It does not identify any purported defects in the court of appeals' reasoning. And any such challenge would not warrant this Court's review in any event. This Court does not grant review to overturn allegedly "erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10. That sort of "[e]rror correction is 'outside the mainstream of the Court's functions.'" *Cavazos* v. *Smith*, 565 U.S. 1, 11 (2011) (Ginsburg, J., dissenting).

2. There was no error regardless. There is no dispute that Proposition 12 is facially non-discriminatory. Pet. App. 2a-3a. It forbids any "business owner or operator," regardless of location, from selling "within the state" any "[w]hole pork meat" derived from "a covered animal who was confined in a cruel manner." Cal. Health & Safety Code §25990(b)(2); Pet. App. 2a-3a. It thus evenhandedly applies to all in-state sales; it places no greater burden on pork coming from outside the State than pork raised within it. If anything, California imposes greater burdens on producers "within the state," who cannot confine a "covered animal" in a "cruel manner" regardless of where the meat is eventually sold. Cal. Health & Safety Code §25990(a).

Nor did Proposition 12 have the purpose of "level[ing] the playing field between out-of-state farmers and in-state farmers." Pet. 15. It is patently implausible that California voters enacted Proposition 12 for any reason other than animal welfare and public health. On its face, Proposition 12 informed voters that its purpose was to "'prevent animal cruelty by phasing out extreme methods of farm animal confinement, which also threaten the health and safety of California consumers.'" Pet. App. 3a (quoting Prop. 12, §2 (2018)); see *Lesher*

Commcn's, Inc. v. *City of Walnut Creek*, 52 Cal.3d 531, 543 (1990) (presuming "voters intend the meaning apparent on the face of an initiative measure" and refusing to impute "an assumed intent that is not apparent in its language."). California's voter information guide advised that Proposition 12 would help "eliminate inhumane and unsafe products from * * * abused animals from the California marketplace" and "reduc[e] the risk of people being sickened by food poisoning" associated with unsanitary overcrowding of farm animals. Official Voter Information Guide, California General Election 70 (Nov. 6, 2018), https://vig.cdn.sos.ca.gov/2018/general/pdf/complete-vig.pdf. Animal welfare charities were the initiative's primary proponents, expending funds to advertise the initiative's animal welfare and public health goals on statewide television and other media.[2]

Keeping immoral products of cruelty off grocery shelves, and ensuring that the food supply is safe, are non-discriminatory goals. The complaint does not plausibly allege that the repeated references to those non-discriminatory goals were somehow a clever ruse to support California's miniscule pork industry—or that voters somehow passed Proposition 12 for such a reason. See Pet. App. 95a (alleging California has only 1,500 breeding pigs "situated in a handful of very small farms").

While petitioner's complaint selectively quotes Proposition 12's statement about "negative fiscal impacts," Pet. App. 134a, the court of appeals explained that the full quote does not support petitioner's contention. The cited

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[2] See Campaign Finance: Proposition 012, Cal. Sec'y of State Shirley N. Weber, Ph.D, https://cal-access.sos.ca.gov/Campaign/Measures/Detail.aspx?id=1399988&session=2017.

"fiscal impacts," it explained, were "associated" with "foodborne illness"—not competition by out-of-state producers. Pet. App. 3a. Petitioner does not attempt to respond.

Petitioner's complaint also quotes the California Department of Food and Agriculture's statement that in-state producers might "find it more costly to compete with farms outside of the state" when selling "to an *out of state buyer*." Pet. App. 133a (emphasis added). As the court of appeals explained, that statement "suggests that Proposition 12 may place *in-state farmers at a competitive disadvantage*." Pet. App. 3a-4a n.2 (emphasis added). California producers must comply with Proposition 12 for all the pork they produce, even when selling it outside the State. Cal. Health & Safety Code §25990(b)(1). Out-of-state producers need not. Placing in-state producers at a competitive disadvantage is the exact opposite of economic protectionism.

3. Petitioner's theory that California somehow gave in-state producers more "lead time" to adjust to the new standards—by subjecting them to certain standards earlier—is equally implausible. It borders on absurd to suggest that California voters passed two ballot initiatives, ten years apart, not for the initiatives' stated purposes, but instead to give a marginal "'lead time'" advantage to a vanishingly small group of in-state producers. Pet. App. 48a. Nor has petitioner offered any support for its assertion that burdening in-state producers for years would somehow give them a later "advantage" when additional confinement standards, including square footage requirements not present in Proposition 2, were applied to any in-state *sale* a decade later. Pet. 18.

Petitioner's comparison of the different lead times provided by Proposition 2 and Proposition 12 was also

inapt. Pet. App. 4a. "Contrary to [petitioner's] characterization, Proposition 12 did not extend the provisions of Proposition 2 to out-of-state producers." *Ibid.* At all times, in-state producers were subject to more stringent standards, because all their facilities had to comply with California law, "regardless of where pork derived from [their] pigs might ultimately be sold." *Ibid.* Out-of-state producers, in contrast, now need only comply with Proposition 12's standards for meat sold within California. *Ibid.*

Moreover, California voters could reasonably choose different procedures—including differences in "lead time"—when enacting distinct laws ten years apart. Voters had every right to "select one phase of one field," applying certain confinement standards for pigs within the State, before requiring all pork sold in the state to meet those and additional standards. *Williamson* v. *Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1955). Petitioner's "lead time" allegations run headlong into the long-established principle that States "need not 'strike at all evils at the same time or in the same way,'" and may "'adopt[] regulations that only partially ameliorate a perceived evil and defer[] complete elimination of the evil to future regulations.'" *Minnesota* v. *Clover Leaf Creamery Co.*, 449 U.S. 456, 466 (1981) (internal citations omitted).

Even if in-state producers were not "comparably burdened" because they were at least partially "*already in compliance*," that cannot show a discriminatory burden. Pet. App. 49a. This Court's decision in *Exxon Corp.* v. *Governor of Maryland*, 437 U.S. 117 (1978), makes that clear. In *Exxon*, a Maryland statute prohibited any "producer or refiner of petroleum products" from operating "any retail service station within the State." *Id.* at 119-120. Because Maryland had "no local producers or

refiners," the burden of the law fell "solely on interstate companies." *Id.* at 125. But that fact did not show discrimination, "either logically or as a practical matter," because the law did not "prohibit the flow of interstate goods, place added costs upon them, or distinguish between in-state and out-of-state companies in the retail market." *Id.* at 125-126. The same is true of Proposition 12.

Finally, petitioner's own litigation choices belie its "lead time" challenge—and render its challenge potentially moot. Had petitioner truly believed that its members faced a competitive disadvantage due to the need to comply with certain Proposition 12 standards in 2018, when they were initially scheduled to be effective, it would not have waited roughly three years to file suit. Pet. App. 24a. Indeed, petitioner filed this suit just weeks before implementation of the requirement that pigs have at least 24 square feet of space. Pet. App. 96a. But that standard had the same effective date for both in-state and out-of-state producers. Pet. App. 139a. And the implementation was not fully enforced until after December 31, 2023, affording petitioner's members five years to comply. See pp. 4-5, *supra*.[3]

The absence of any plausible basis for alleging discrimination explains why prior Proposition 12 challengers either disavowed any discrimination claim (like NPPC) or voluntarily dismissed despite having raised it initially (like NAMI). See pp. 5-7, *supra*.

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[3] It is also far from clear how any court could give petitioner effective relief in connection with its head-start theory. It is now 2025, and more than six years have passed since petitioner first received notice of California's requirements. That is more time than in-state producers were given in connection with Proposition 2's requirement that pigs have enough space to stand up and turn around.

Petitioner's persistence in relying on that theory to distinguish *Ross*, while refusing to mount any meaningful challenge the court of appeals' finding that it was not plausible, makes this an especially undesirable case for further review.

B. Petitioner's Remaining *Pike* Allegations Are Identical to Those This Court Found Insufficient in *Ross*

Petitioner attempts to distinguish its *Pike* claim from the one in *Ross* based on its (implausibly pleaded) discrimination allegations. Pet. 15-16. The plaintiff in *Ross* conceded that Proposition 12 did not discriminate. *Ibid.* But petitioner failed to plausibly plead such a claim itself. Petitioner nowhere challenges the rationales the district court and court of appeals gave for finding petitioner's allegations of discrimination implausible. As a result, there are no meaningful allegations of discrimination in this case.[4] And petitioner's remaining challenge to Proposition 12 is substantively identical to the challenge that this Court rejected only two years ago in *Ross*. While petitioner asserts that a majority of Justices approved of NPPC's *Pike* claim, the opposite is true. A majority held that NPPC's *Pike* claim should be dismissed.

1. Petitioner's allegations are strikingly similar to NPPC's in *Ross*. Both alleged:

- That there is "significant integration and coordination" in the "national pork production and distribution system." Pet. App. 99a; see *Ross*, 598 U.S. at

[4] Nor does petitioner offer any reason why the court of appeals' case-specific ruling on plausibility warrants this Court's review. It instead attempts to blink away that plainly uncertworthy barrier to review.

367 ("Much of pork production today is vertically integrated * * * .").

- That the system "cannot track which hogs came from producers complying with Proposition 12." Pet. App. 113a; see *Ross*, 598 U.S. at 367 (describing allegation that system must be revised to "segregate and trace Proposition 12-compliant pork").
- That Proposition 12's "restrictions would require significant changes to the vast majority of pork production operations." Pet. App. 113a; see *Nat'l Pork Producers Council* v. *Ross*, No. 19-cv-02324 (S.D. Cal. Dec. 5, 2019), ECF No. 1 ¶325 ("Proposition 12 will also require virtually all farms to change the way they acquire or raise and first breed gilts.").
- That, because California supplies "1% of the total U.S. pork production," the "enormous costs" of compliance with Proposition 12 will be borne by producers outside California. Pet. App. 96a-98a; see *Ross*, 598 U.S. at 367 ("[B]ecause California imports almost all the pork it consumes, * * * 'the majority' of Proposition 12's costs will be initially borne by out-of-state firms.").
- And that Proposition 12's claim of health and animal-welfare benefits was "false and inconsistent with scientific studies," such that any local benefits could not outweigh Proposition 12's enormous costs. Pet. App. 99a; see *Ross*, 598 U.S. at 366 ("[E]xisting farm practices did a better job of protecting animal welfare * * * and ensuring consumer health * * * than Proposition 12 would.").

This Court considered those very allegations in *Ross* and found them insufficient to state a claim under *Pike*.

598 U.S. at 377-389. To succeed on a *Pike* claim, a plaintiff must at the very least allege a burden on "interstate commerce" that is "clearly excessive in relation to the putative local benefits." *Id.* at 377 (internal quotation marks omitted). Three Justices (Gorsuch, Thomas, and Barrett) concluded that NPPC's challenge failed because *Pike* could not be applied at all: "[N]o court is equipped to undertake" a comparison between the economic "costs" Proposition 12 imposed on "some out-of-state producers who choose to comply" and the ballot initiative's "moral and health interests." *Id.* at 380-382 (plurality opinion). Four Justices (Gorsuch, Thomas, Sotomayor, and Kagan) concluded that, even if comparison were possible, NPPC's allegations failed to plead a "sufficient burden on interstate commerce" under *Exxon*. *Id.* at 383-387 (plurality opinion). They reasoned that, while Proposition 12's restrictions might "disrupt the existing practices of some industry participants," that was not the same as burdening "'interstate commerce.'" *Id.* at 384-385 (plurality opinion) (quoting *Exxon*, 437 U.S. at 127). Because a majority of Justices agreed that NPPC had not pleaded a proper *Pike* claim, the Court affirmed the judgment below. *Id.* at 391.

For that reason, petitioner's repeated contention that "a majority of Justices rul[ed] that NPPC stated a *Pike* claim," Pet. 19; see Pet. 18, is just plain wrong—it turns *Ross* on its head. The judgment in *Ross* was that NPPC's *Pike* claim could not survive; the Court thus affirmed the lower courts' dismissal. 598 U.S. at 377-391. And a majority agreed that the *Pike* claim could not proceed—a total of five Justices in all. Although one Justice in the majority—Justice Barrett—would have found that NPPC alleged a "substantial burden on interstate commerce," *id.* at 394 (Barrett, J., concurring),

that is not enough to establish a *Pike* claim. *Pike* requires the substantial burden to be "*clearly excessive* in relation to the putative local benefits." *Id.* at 377 (internal quotation marks omitted) (emphasis added). And Justice Barrett held that excessiveness could not be established because it was not possible to compare Proposition 12's in-state moral and health benefits against interstate financial costs. For such weighing to occur, "it is axiomatic that both must be judicially cognizable and comparable." *Id.* at 393 (Barrett, J., concurring). Here, she concluded they were not. *Ibid.* "California's interest in eliminating allegedly inhumane products from its markets cannot be weighed on a scale opposite dollars and cents—at least not without second-guessing the moral judgments of California voters or making the kind of policy decisions reserved for politicians." *Ibid.*; see also *id.* at 380-382 (plurality opinion).

Petitioner never addresses how to balance the "incommensurable" interests at stake, *Ross*, 598 U.S. at 393 (Barrett, J., concurring), much less explains why its complaint would lead to a different result for Justice Barrett or any other member of this Court. The legitimate, noneconomic benefits motivating Proposition 12 do not disappear merely because petitioner has implausibly alleged discrimination.

2. Regardless, later developments have further undermined any allegation of a substantial burden under *Pike*. See *Ross*, 598 U.S. at 386 ("Further experience may yield further facts."). In *Ross*, this Court explained that many pork producers were already moving away from the cruelest confinement methods toward systems that can house pigs in a Proposition 12 compliant manner. *Id.* at 387 n.3; see also Brief of *Amicus Curiae* Perdue Premium Meat Company, Inc., d/b/a Niman

Ranch in Support of Respondents at 2-3, *Nat'l Pork Producers Council* v. *Ross*, No. 21-468 (U.S. Aug. 15, 2022). Indeed, at the time *Ross* was decided, many companies had represented that they were complying with Proposition 12 without incurring any material additional costs. Brief of Intervenor Respondents at 5-6, *Nat'l Pork Producers Council* v. *Ross*, No. 21-468 (U.S. Aug. 10, 2022).

Two years further on—and over six years after voters passed Proposition 12—pork producer after pork producer has publicly confirmed that Proposition 12 imposes no meaningful burden on its operations. Hormel does not expect compliance with animal welfare laws like Proposition 12 to have a "material impact on its capital expenditures, earnings, or competitive position."[5] Smithfield has reported that, after Proposition 12's implementation, "Fresh Pork segment profit increased by $82 million, or 112.7% year-over-year."[6] Proposition 12 has not substantially burdened industry participants, much less interstate commerce. The national pork market is plainly not in an economic freefall. Petitioner may think otherwise. But that sort of factual controversy is not grist for this Court.

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[5] Hormel Foods, Annual Report (Form 10-K) at 4-5 (Oct. 27, 2024), https://www.sec.gov/ix?doc=/Archives/edgar/data/48465/000004846524000051/hrl-20241027.htm.

[6] Smithfield Foods, Inc., Amend. No. 1 to Form S-1 Registration Statement, Registration No. 333-284141, at 81-82 (Jan. 21, 2025) https://www.sec.gov/Archives/edgar/data/91388/000162828025001928/smithfieldfoods-sx1a1.htm.

C. The Petition Identifies No Important Issue for Review

Petitioner identifies no legal question warranting this Court's review. Petitioner instead argues that Proposition 12 threatens "economic warfare," in which the "social or moral issue *du jour* just become[s] the subject of sales bans on out-of-state products." Pet. 20-21. This Court heard and rejected similar predictions in *Ross*. Brief for Petitioners at 33, *Nat'l Pork Producers Council* v. *Ross*, No. 21-468 (U.S. June 10, 2022). No subsequent developments support petitioner's dire claims. Petitioner cites just two supposed examples of state laws passed after *Ross*. Pet. 21 n.4. Two examples hardly support a claim of "economic warfare" requiring this Court's attention. And the current petition is not a proper vehicle for addressing those statutes regardless. Any issues concerning their merits can be litigated in any suits that challenge those laws in particular.

The petition, moreover, is an exceptionally poor vehicle for addressing any such issues. Even apart from the absence of reason to review the plausibility ruling that dispensed with petitioner's discrimination claim, it is far from clear whether further proceedings could provide petitioner with meaningful relief. For example, petitioner urges that Proposition 12 discriminated against out-of-state producers by giving them less "lead time" than in-state producers received when implementing Proposition 2's (distinct) standards. Pet. 18. Even if that were true—but see pp. 15-20, *supra*—the proper remedy would simply be more "lead time," not invalidation of Proposition 12's otherwise neutral standards. Cf. Pet. App. 138a (requesting "stay of enforcement of Proposition 12"). But petitioner waited years to file this suit. And because Proposition 12 was passed more than six years ago, petition-

er and its members by now have already had more than six years of time to comply—more than the six years California producers were given in connection with Proposition 2. Many pork producers have done so, without "material impact" on their operations. See pp. 23-24, *supra*. The stakes in this case thus have nothing to do with "economic warfare." Even a successful challenge at most could afford out-of-state producers some additional increment of time to implement standards this Court has already upheld.

II. THE PETITION DOES NOT PROPERLY PRESENT ANY ISSUE UNDER *MARKS* V. *UNITED STATES*

Petitioner argues that this petition presents a good vehicle for this Court to review whether, under *Marks* v. *United States*, 430 U.S. 188 (1977), lower courts should consider dissents, or instead should consider only concurrences, when identifying the holding of "fragmented" decisions in which "no single rationale explain[s] the result." *Id.* at 193; see Pet. 22-27. But this case is no such vehicle. *Marks* has no bearing on the application of *Pike* to petitioner's complaint. No analysis of concurring and dissenting opinions is necessary to understand that the result this Court reached in *Ross* is binding here—a later case challenging the same statute, under the same constitutional provision, based on allegations that are legally indistinguishable. That makes this an exceptionally poor vehicle to address petitioner's proposed issue. The outcome could not change regardless of whether the court of appeals considered dissents in addition to concurrences. And other vehicle issues abound.

A. *Marks* Has No Impact on the Proper Application of *Ross* Here

Petitioner contends that the court of appeals' decision rested on an "erroneous reading and interpretation of *Marks*." Pet. 22. Not so. A majority in *Ross* determined

that NPPC's identical challenge to Proposition 12 failed to state a *Pike* claim. That specific holding dictates the same ruling here—affirmance of dismissal. No parsing of dissents and concurrences would change that outcome.

The court of appeals correctly recognized that the "'specific result'" in *Ross* is "'binding on lower federal courts.'" Pet. App. 6a (quoting *United States* v. *Davis*, 825 F.3d 1014, 1022 (9th Cir. 2016) (en banc)). Even where "it can be difficult to discern which opinion's reasoning has precedential effect under *Marks*," the "*result* of the decision still constitutes a binding precedent for the federal and state courts, and for this Court, unless and until it is overruled by this Court." *Ramos* v. *Louisiana*, 590 U.S. 83, 125 n.6 (2020) (Kavanaugh, J., concurring in part); see also *A.T. Massey Coal Co.* v. *Massanari*, 305 F.3d 226, 237 (4th Cir. 2002) (holding that fractured Supreme Court judgment binds future plaintiff "in a substantially identical position").

Indeed, this Court has held that even "[s]ummary affirmances" with no legal analysis "prevent lower courts from coming to opposite conclusions on the precise issues presented and necessarily decided by those actions." *Mandel* v. *Bradley*, 432 U.S. 173, 176 (1977). The precise issue in *Ross* was whether NPPC had plausibly alleged that Proposition 12's burden on out-of-state producers was "clearly excessive in relation to the putative local benefits." 598 U.S. at 377 (internal quotation marks omitted). This Court decided that NPPC had not done so and held its *Pike* claim was properly dismissed as a result. *Id.* at 377-389.

Petitioner's *Pike* claim is indistinguishable from the one in *Ross*. Both invoke the same burdens to the "national pork production and distribution system." Pet. App. 99a; see pp. 20-21, *supra*. Both compare that burden to

Proposition 12's animal-welfare and health benefits. See p. 21, *supra*. The court of appeals could not weigh the same burdens and benefits at issue in *Ross* and come to the "opposite conclusion[ ]" in this case. *Mandel*, 432 U.S. at 176. That different Justices applied different rationales in *Ross* is irrelevant. The alleged burdens and benefits are no less "incommensurable." *Ross*, 598 U.S. at 381-382 (plurality opinion). Nor has the nature of the burden alleged—a disruption to the "existing practices of some industry participants"—changed. *Id.* at 384-385 (plurality opinion). If anything, any burden has since proved overstated. See pp. 23-24, *supra*. And petitioner seeks to distinguish its claim solely on the ground that the plaintiff in *Ross* "did not advance any theory of discrimination." Pet. 2. But petitioner has not presented a plausible discrimination claim either. See pp. 15-20, *supra*.

Petitioner faults the court of appeals for "refusing to consider the dissenting votes to determine the majority ruling from *Ross*." Pet. 22. It urges that doing so would have somehow led to a conclusion that its *Pike* claim should proceed. *Ibid.* But "dissents are just that—dissents." *Ross*, 598 U.S. at 389 n.4 (plurality opinion). "When it comes to *Pike*, * * * a majority * * * reject[ed] any effort to expand *Pike*'s domain to cover cases like this one." *Ibid.* There is no basis for concluding that placing the same case before the Court today would yield a different result. That disposes of petitioner's challenge independent of any reading of *Marks*. Pet. App. 6a.

B. The Petition Does Not Properly Present Any Circuit Split Over *Marks*

The petition is also an extremely poor vehicle for reviewing any issue relating to *Marks*. For one thing, petitioner does not demonstrate how a different approach to *Marks* would change the outcome of its *Pike* claim.

For another, petitioner conceded below that the court of appeals was bound by its *own* prior decision in *NPPC I*. That independent basis for the decision below would require affirmance without regard to *Marks* or the purported split in authority.

1. Although this Court has recognized "differences over the proper application of *Marks*," *Hughes* v. *United States*, 584 U.S. 675, 679 (2018), the petition fails to analyze whether any such differences would affect the outcome here. They would not. The courts of appeals universally agree that the outcomes of this Court's decisions are binding on identically situated litigants even if the rationale is fragmented. As explained above, petitioner's claims are essentially indistinguishable from the ones this Court addressed in *Ross*. The claims being indistinguishable, the result must be as well. Because the petition provides no opportunity to address any split of authority, review is unwarranted. Where "the resolution of" even "a clear conflict is irrelevant to the ultimate outcome of the case before the Court," this Court will ordinarily deny review. Stephen M. Shapiro, et al., *Supreme Court Practice* § 4.4(f), at 4-18 (11th ed. 2019).

Petitioner's arguments make clear that this case's outcome does not depend on an interpretation of *Marks*. Petitioner observes that, in some circuits, dissenting opinions "may not be counted" when identifying a controlling rationale under *Marks*; but it urges that, in the Third and the Fourth Circuits, "dissenting votes may count towards determining the majority view on a principle of law from a fractured Supreme Court opinion." Pet. 22-23. But even the Third and Fourth Circuits have interpreted *Marks* to render fragmented opinions binding on any litigant in a "substantially identical position * * * with respect to both the plurality and * * * con-

currence." *Unity Real Est. Co.* v. *Hudson*, 178 F.3d 649, 659 (3d Cir. 1999); *A.T. Massey*, 305 F.3d at 237. The binding nature of this Court's precedent "on the precise issues presented and necessarily decided" follows logically from *Mandel* and other precedent. 432 U.S. at 176; see pp. 27-28, *supra*. That legal rule alone suffices to dispose of this case, irrespective of whether dissenting opinions are considered. *Ibid.*

Petitioner makes no serious effort to show that *this case* comes out differently in different circuits. Petitioner nowhere identifies any reason to believe that the Third Circuit, the Fourth Circuit, or any other court would—unlike the decision below—balance the burdens and benefits of Proposition 12 differently from this Court in *Ross*. There is every reason to believe the opposite. Such a decision would require a lower court to ignore some Justices' conclusion that the burdens petitioner identifies are not sufficient under *Pike*, or other Justices' conclusion that, even if the burdens were cognizable, they would be "incommensurable" to Proposition 12's benefits. *Ross*, 598 U.S. at 377-389. No court has done so. The same case, attacking the same statute, under the same theories, would be resolved the same way by the same Justices.

Nor does petitioner's implausible discrimination claim make a difference. That petitioner asserted an implausible claim of discrimination, while the plaintiff in *Ross* asserted no claim of discrimination at all, is not a material difference. In each instance, there is no legally cognizable claim of discrimination in the case.

2. Petitioner now claims that the court of appeals erred when it relied on its own prior ruling in *NPPC I* in analyzing the *Pike* claim. Pet. 22. But petitioner waived any objection to that: It "conceded at oral argument"

that the court of appeals panel deciding this case was "bound" by that prior decision. Pet. App. 6a n.4.[7] Even Judge Callahan, on whose concurrence petitioner relies, Pet. 13, found it "significant that [petitioner] concedes that" the court of appeals' prior decision "controls," Pet. App. 12a. Having agreed that the court of appeals panel was "bound" by its prior decision, Pet. App. 6a n.4, petitioner cannot seek reversal on the ground that the court erroneously relied on that prior decision to inform its *Pike* analysis. See *Buck* v. *Davis*, 580 U.S. 100, 127 (2017) (declining to reach question that had been waived in lower courts).

The supposed error is of no moment regardless. The court of appeals recognized that this Court's decision in *Ross* required dismissal. It explained that a "majority" of this Court "held" that NPPC's "challenge to Proposition 12 fell 'well outside *Pike*'s heartland.'" Pet. App. 6a. It deemed the "'specific result'" this Court reached "'binding on lower federal courts.'" *Ibid.* (quoting *Davis*, 825 F.3d at 1021-1022). Those statements alone support dismissal of petitioner's *Pike* challenge, without any reliance on the court of appeals' prior decision in *NPPC I*.

III. THE REMAINING ISSUES PETITIONER RAISES ARE OUTSIDE THE QUESTIONS PRESENTED AND DO NOT WARRANT REVIEW IN ANY EVENT

Petitioner concludes by asserting that this Court should grant the petition "because the Ninth Circuit

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[7] See also *Iowa Pork Producers Ass'n* v. *Bonta*, Case No. 22-55336 (9th Cir.), Oral Argument at 7:55-9:00, https://www.youtube.com/watch?v=6yblvlZpLF8 ("Q: But you conceded that, given the affirmance, everything in that opinion, to the extent it's relevant—and there's an argument about that—is binding on us as a three judge panel? A: That's correct.").

erred on the merits when dismissing" other claims in the complaint, including challenges under the Due Process Clause, the Privileges and Immunities Clause, and the Packers and Stockyards Act. Pet. 27-33. But those issues are outside the questions petitioner presents for review and do not warrant review regardless.

A. Petitioner's Remaining Questions Are Beyond the Questions Presented

This Court's Rule 14.1(a) requires petitions to include, at the outset of the petition, "[t]he questions presented for review." The petition here raises two questions. First, it asks whether California's Proposition 12 violates the dormant Commerce Clause. Pet. i-ii. Second, it asks whether lower courts should consider dissenting opinions when identifying the holding in "fractured" opinions from this Court. *Ibid.* Neither of those questions encompasses the very different challenges to Proposition 12 that petitioner identifies toward the end of its petition—whether Proposition 12 violates the Due Process Clause, the Privileges and Immunities Clause, or the Packers and Stockyards Act.

The failure to identify those issues in the questions presented precludes further review. "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." Sup. Ct. R. 14.1(a). "The framing of the question presented" thus has "significant consequences," because this Court "ordinarily do[es] not consider questions outside those presented." *Yee* v. *City of Escondido*, 503 U.S. 519, 535 (1992). This Court will depart from that rule "'only in the most exceptional cases.'" *Id.* at 535 (quoting *Stone* v. *Powell*, 428 U.S. 465,

481 n.15 (1976)). This case presents no such exceptional circumstances.[8]

That the petition discusses those other issues elsewhere, in text, does not cure the error. Such discussion "does not bring" an issue before this Court because "Rule 14.1(a) requires that a subsidiary question be fairly included in the *question presented* for * * * review." *Wood* v. *Allen*, 558 U.S. 290, 304 (2010) (quoting *Izumi Seimitsu Kogyo Kabushiki Kaisha* v. *U.S. Philips Corp.*, 510 U.S. 27, 31 n.5 (1993) (per curiam)).

B. The Petition Does Not Present Any Compelling Reason for Review of the Remaining Issues

Petitioner's additional issues do not warrant review in any event. The petition identifies no division of circuit authority on any of those issues. It does not offer a compelling reason this Court must review the issues now. It does not address the court of appeals' rationale for dismissing those claims. Compare Pet. 30-33, with Pet. App. 8a-11a. The petition instead simply offers its view of each claim. Pet. 30-33. That conclusory presentation does not support further review. Sup. Ct. R. 10.

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[8] Nor are petitioner's claims under the Due Process Clause, Privileges and Immunities Clause, or Packers and Stockyards Act "fairly included" in questions that raise the dormant Commerce Clause and *Marks*. Sup. Ct. R. 14.1(a); *Yee*, 503 U.S. at 537. One question is "included" within another only if it is "subsidiary," such that analysis of it would "assist in resolving" the broader issue. *Yee*, 503 U.S. at 537. Resolution of petitioner's arguments under *Marks* and the dormant Commerce Clause has no bearing on claims under the Due Process Clause, Privileges and Immunities Clause, or Packers and Stockyards Act. Even claims that are "related" or "complementary" to the questions presented are not considered "'fairly included therein.'" *Ibid.*

Petitioner, moreover, does not identify any other court of appeals decision addressing such challenges in the context of a law like Proposition 12. This Court's "ordinary practice" is to "deny[ ] petitions insofar as they raise legal issues that have not been considered by additional Courts of Appeals." *Box* v. *Planned Parenthood of Ind. & Ky., Inc.*, 587 U.S. 490, 493 (2019) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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