

Pork Industry Exaggerations and False Framing About the Effects of Prop 12 and Question 3 Undercut Case for EATS Act

Agriculture veterinarians urge Agriculture Committee members to take a fact-based look at an industry with diversified production, domestic and global markets, and thousands of producers who will benefit from modified markets in California and Massachusetts

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Summary

“Truth will rise above falsehood as oil above water.”
— Miguel de Cervantes

- The NPPC is misrepresenting the effects of Prop 12 on American pig producers, falsely claiming that California is telling some pig farmers in major producing states how to farm. The trade association would be wrong even if its claim had been correct that California alone represents 15 percent of U.S. pork sales. But that number, when considering total domestic and foreign U.S. pork sales and accounting for exempted pork products from the reach of the California and Massachusetts voter-approved statutes, is exaggerated by nearly 300 percent. Complete implementation of Prop 12 in California and Question 3 in Massachusetts collectively affect just 6 percent of the sales of U.S.-produced pork, and there is already sufficient supply capacity to handle that demand.
- Despite claims by the National Pork Producers Council (NPPC), the best available evidence strongly suggests that Prop 12 and Question 3 implementation will benefit pig producers and not require any meaningful changes in the way non-compliant farmers conduct their work. Nor should the measure be the singular cause of any price increase given that existing, competitive sow housing already compliant with Prop 12 exists on a scale that exceeds demand for California and Massachusetts.
- Producers who continue to rely on extreme confinement for breeding sows will, however, face pressure to shift toward slightly more extensive housing systems because nearly the entire food retail sector has pledged to phase out the use of gestation crates. More than 60 of the biggest names in American

The US industrial pork claim that CA Prop 12 is an economic threat to the industry is a **red herring**



What is a gestation crate?

A gestation crate is a metal bar enclosure used to individually confine pregnant sows & gilts (female pigs)

- Once sows are bred, they are placed into gestation crates until about a week before they farrow (i.e. have piglets). Pig pregnancy lasts about 4 months
- A typical gestation crate is 7 feet by 2 feet, but these dimensions may vary across commercial farms
- Gestation crates prevent sows from fighting over feed & dominance but have severe animal welfare, public health and disease sequelae
- In the European Union, gestation crates are banned due to animal welfare issues after four weeks gestation. Group housing of gestating sows has been mandatory since 2013.
- Nevertheless, the European Union produces about twice the amount of pork as the US. In 2020, the EU produced 24.15 million metric tons of pork, while the US produced 12.84 million metric tons, ranking second and third in the world after China.



Typical gestation crate design



food retail — representing 90 percent of U.S. pork sales — have issued public statements condemning the use of crates or supporting animal-housing frameworks that would allow meaningful movement by the sows in their pre-birthing period. The EU, with a market size 170% larger than the United States, began to implement in 2013 a community-wide restriction of gestation crates.

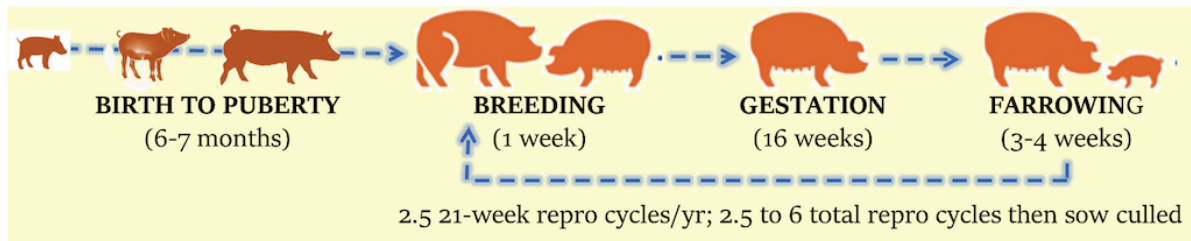
- Since Florida became the first state to pass a law banning gestation crates in 2002, there has been significant movement in the pig production industry to shift toward a crate-free future for pre-birthing sows. U.S. pork producers are the most innovative and progressive of all American livestock industries and have already demonstrated that adaptability. Pleadings submitted to the U.S. Supreme Court in *NPPC v. Ross* resulted in multiple major producers

indicating that they have existing supplies to handle demand from California.

- A conservative-dominated U.S. Supreme Court ruled that Prop 12, and by implication Question 3 in Massachusetts, were a proper exercise of state authority. The Court noted that previous attempts to nullify state laws imposing limits on agricultural commerce failed on prior Farm bills in 2014 and 2018 and that the NPPC went to the courts to get the relief it could not secure in Congress. While the Court said that Congress does have the authority to overturn state laws, it did not invite that action or sanction it in any way, as any fair reading of the majority opinions indicates. It is not the role of the Court to recommend any policy action, but to review whether a challenged statute is constitutional.

Reproducing females – the most valuable animals in pork production b/c they are source of final farm product: market hogs

- Three phases for the adult sow: 1 - *Breeding*; 2 - *Gestation* (pregnancy); & 3 - *Farrowing* (birth & nursing)
- Crate may be used in all, some or none of each phases



Sow confinement	BREEDING	GESTATION	FARROWING	COMMENTS	% adult life in crate
Most intensive	Crate or pen	Crate	Crate	~60% of US swine producers	95% to 100%
Semi-intensive	Pen	Crate 1 st 7 to 30 d post-breeding then group pen*	Crate or pen (rare)	US transitioning to group gestation pens; EU since 2013	~40%
Least intensive	Pen	Pen	Crate or pen (rare)	CA Prop 12 & MA Q3 requirement	~20%

* Crate until confirmed pregnant

I. Gestation crates & Prop 12 and Question 3

In November 2018, California voters overwhelmingly approved Proposition (“Prop”) 12, the “Prevention of Cruelty to Farm Animals Act,” to mandate more living space for certain intensively-reared and tightly-confined farm animals. The measure passed by a vote of 63% to 37%, building on a prior anti-confinement measure approved in 2008 (Prop 2) and a statute (A.B. 1437) enacted in 2010 that provided more specific space requirements for *egg-laying hens, breeding pigs, and calves raised for veal* and restricted sale of eggs from laying hens. Prop 12 also stipulated that pork, eggs, or veal sold in the state must come from farms that observe the animal-housing standards set forth in Prop 12, whether the farms operate within or outside of California’s borders.

The egg industry and the veal industry accept and support the standards built into Prop 12 and did not contest the ballot measure. The pork industry did and actively opposed the ballot measure, making sim-

ilar claims to those articulated before the Supreme Court and in other settings. The voters, in the nation’s biggest agricultural state, thoroughly rejected those arguments and gave a landslide win to Prop 12 proponents.

After voters approved the measure, the National Pork Producers Council and other agribusiness trade associations filed a series of lawsuits seeking to invalidate the measure, ultimately settling on an argument that Prop 12 violates the dormant Commerce Clause. The plaintiffs in these cases filed multiple suits in multiple federal courts and lost them all. In May 2023, the Supreme Court of the United States made a dispositive ruling, favoring the state of California and determining that Prop 12 was a proper exercise of state authority. In all, the NPPC and other plaintiffs challenging Prop 12, Prop 2, and A.B. 1437 lost 12 straight cases in the federal courts.

The US industrial pork claim that CA Prop 12 is an economic threat to the industry is a **red herring**



California’s Proposition 12 in a nutshell

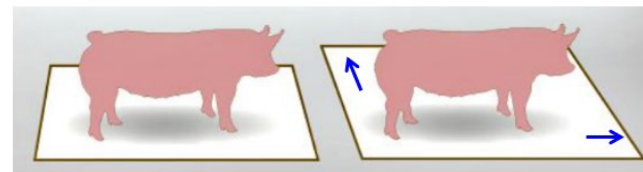
Pork raised or sold in California must originate from a gestating (pregnant) sow or gilt that could:

- **Stand up; Extend her legs; Turn around; Have at least 24 square feet (2.2 m²) at her disposal.**
- Prop 12 applies to all uncooked pork sold in California, whether raised in California or elsewhere in the US or other countries
- Only whole, uncooked pork cuts, like bacon or tenderloin, must be Prop 12-compliant. All other products, like ground pork, precooked pork, or deli meat (~ [42 percent of pork consumption in the state](#)) do not.
- A similar requirement exists for pork raised or sold in MA

The law does not mandate how these requirements are met

Possible ways to meet CA Prop 12 requirements include:

- Group housing of pregnant sows e.g. indoor pens with at least 24 ft sq per pregnant pig, hoop barns or on outdoor pastures
- The US swine industry is most adaptable of any US livestock industry and can readily adjust to Prop 12.
- Many large producers such as [Clemens Food Group](#), [Hormel](#), [Niman Ranch](#) and independent family farmers are already Prop 12 complaint or ready to comply.



14 square feet

Typical swine industry gestation crate space per sow (2 ft x 7 ft)

- Size of a std refrigerator

24 square feet

CA Prop 12 required space per pregnant sow. Achieve by:

- Group housing or larger pens



Pregnant sows in standard 2 ft x 7 ft gestation crates

- Used by about 60% (3.6M) of six million US breeding sows
- Banned by CA Prop 12 & MA Q3



Pregnant sow group housing

- Used by about 40% (2.4 M) of 6 million US breeding sows
- CA Prop 12 compliant if 24 sq ft of floor space per sow

II. The gestation crate debate is coming to an end

Prop 12 addresses the use of “gestation crates” — metal cages just slightly larger than their bodies — that are immobilizing pre-birthing crates commonly used by many pig producers for the entirety of the sow or gilt’s four-month-long gestation. Despite some Midwest farm-state Senator’s claims, **Prop 12 does not ban or limit the use of farrowing crates**, the larger stalls used for birthing and nursing the sow’s many piglet offspring during their three-to-four-week birth-to-weaning period. These lawmakers, apparently provided information by critics of Prop 12, made the demonstrably inaccurate argument that Prop 12 would result in the crushing of piglets.

The use of 2 feet x 7 feet (14 square feet) gestation crates prevents pregnant female pigs from lying down, turning around, or stretching their limbs. This extreme form of confinement resulted in stereotyped behaviors such as repetitive bar biting, head swinging, and other behaviors that indicate high stress and frustration. Prop 12 requires a minimum of 24 square feet per sow whether in a crate, stall, group pen, or

outdoor pasture, thereby allowing pregnant sows the simple behavioral freedoms to lie down, stand up, turn around, or stretch their limbs.

Gestation crates have **well-documented and prevalent health and welfare impacts on pregnant sows**, even though **different pregnant sow housing systems have relative advantages and disadvantages**. There are also **several public health disease risks to people** and infectious disease risks to pigs that originate from the gestation crate housing of pregnant swine.

The egg and veal industries accepted that supermajorities of Californians want to give animals used for food production better lives and more space. They wanted to enshrine into law new market rules for the sale of pork, eggs, and veal destined for California markets. The trade association for the U.S. pork industry falsely argued that Prop 12 was an existential economic threat with **dire predicted negative consequences including a pork shortage in California, higher pork prices nationwide, and billions of dollars in compliance costs for pork producers**. The NPPC

Prop 12:

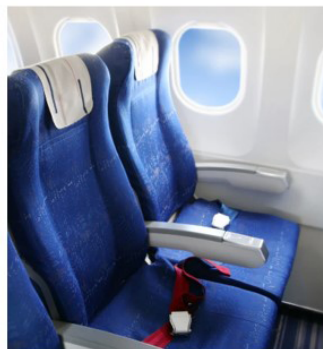
Gestating sow must be able to:

- Stand up. Turn around. Lie down.
- Stretch limbs w/o touching enclosure sides or another animal.
- Minimum **24 sq ft** accessible floor space per sow
- Penalty - \$1,000 fine & up to 180 days in prison for violation.



Typical gestation stall dimensions:

- 7 ft long
 - 2 ft wide
 - 3 ft high
- } **14 sq ft floor space**



“Sow gestation stalls ... are like living in an airline seat and never being allowed to walk in the aisle.”

Temple Grandin



A coffin & standard-sized refrigerator have similar in dimensions to a gestation crate



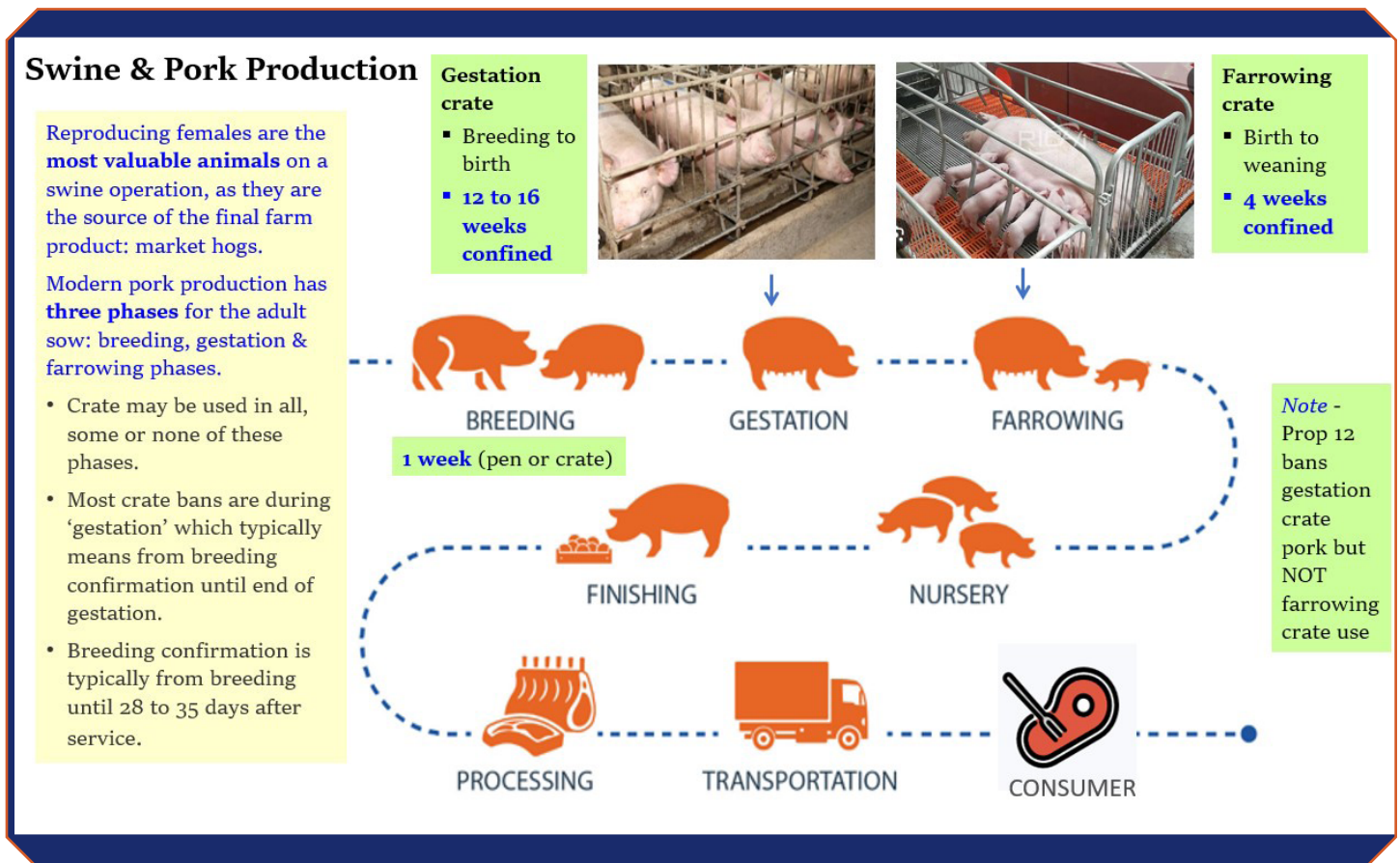
had to know that its claims about the share of Prop 12- and Question 3-compliant pork production destined for California and Massachusetts markets was exaggerated, and that the industry already had capacity to meet new demand, with, in some cases, some very minor adjustments (such as removing a single sow from a group housing setting to comply with the 24-foot requirement for a single sow) to existing group housing systems. “Tyson is currently aligning incentivizing suppliers where appropriate,” reported Tyson Foods CEO Donnie King to shareholders in 2021. “We can do multiple programs simultaneously, including Prop 12 . . . we can certainly provide the raw material to service our customers in that way.”

Momentum against gestation crates has been building for years. Rather than accept the fast-approaching reality that gestation crates will meet the same fate as the buggy whip and rotary dial phone, the NPPC and its allies are seeking federal preemption and to favor sow producers using gestation crates over group housing systems or variants of those systems (Electronic Feeding Systems or Hoop Barns). Yet, at the apparent behest of the NPPC, U.S. Sen. Roger Marshall,

R-Kansas, and U.S. Rep. Ashley Hinson, R-Iowa, introduced the Ending Agricultural Trade Suppression (EATS) Act. This bill, which proponents seek to attach as an amendment to the 2023 Farm Bill, would curb the ability of states to regulate any pre-harvest agricultural products sold within their borders and, **most importantly from the NPPC viewpoint, overturn California’s Prop 12.** An analysis by researchers at Harvard University concluded that the EATS Act, as introduced, would overturn more than 1,000 democratically adopted state and local statutes and regulations, including Prop 12 and Question 3.

It is clear, however, that the NPPC does not represent the entire pork industry on this matter. There are thousands of producers, **including some of the biggest companies in the field, that support Prop 12 and Question 3** (Massachusetts) and view the statutes as creating vital markets for them.

- Up to 40% of U.S. pregnant swine are already in group housing, in contrast to solitary housing in gestation crates.

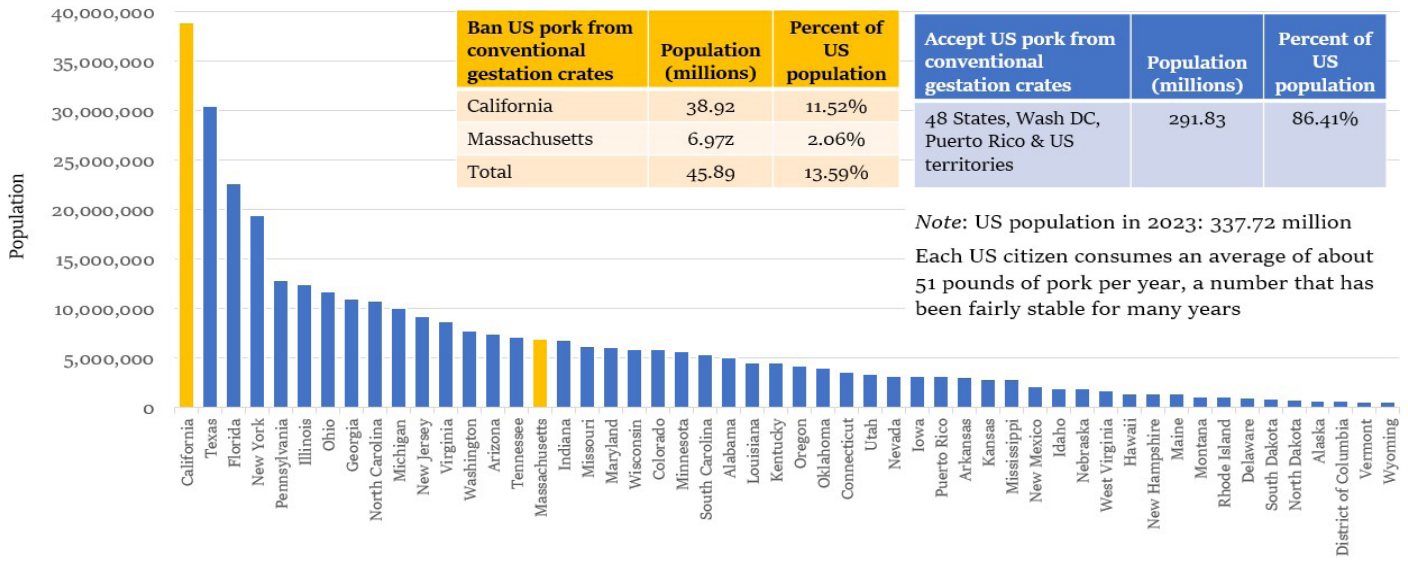


The US industrial pork claim that CA Prop 12 is an economic threat to the industry is a red herring



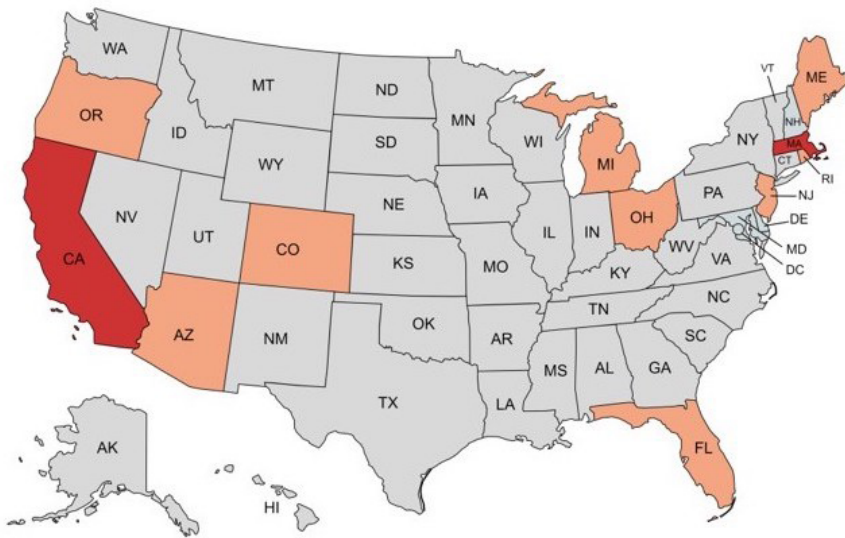
The 46M people in California & Massachusetts are:

- **Just 0.66%** of US pork industry’s domestic & international market of **6.92 billion** persons
- **Only 13.6%** of US domestic pork market that ban pork from conventional gestation crates



- California and Massachusetts represent just 10 percent of the U.S. market share for U.S.-produced and sold pork, but with the exemptions in Prop 12 and Question 3 for combined and canned pork products, the amount of Prop 12- and Question 3-compliant pork needed for those markets is just 6 percent of total U.S. production.

Eleven US States with gestation crate restrictions



- Ban on gestation crate use & retail sales of pork raised using gestation crates
- Ban on gestation crate use
- No State hog welfare regulations

- Gestation crates are banned now in 12 states and more than **60 of the biggest names in American food retail**, accounting for more than 90 percent of pork sales, have made public pronouncements opposing gestation crates or stipulating that breeding sows should have basic opportunities to move. **Some major food retailers**, which some years ago promised to source pork from farms that do not rely on gestation crates, have let their timelines slip for more humane sourcing.

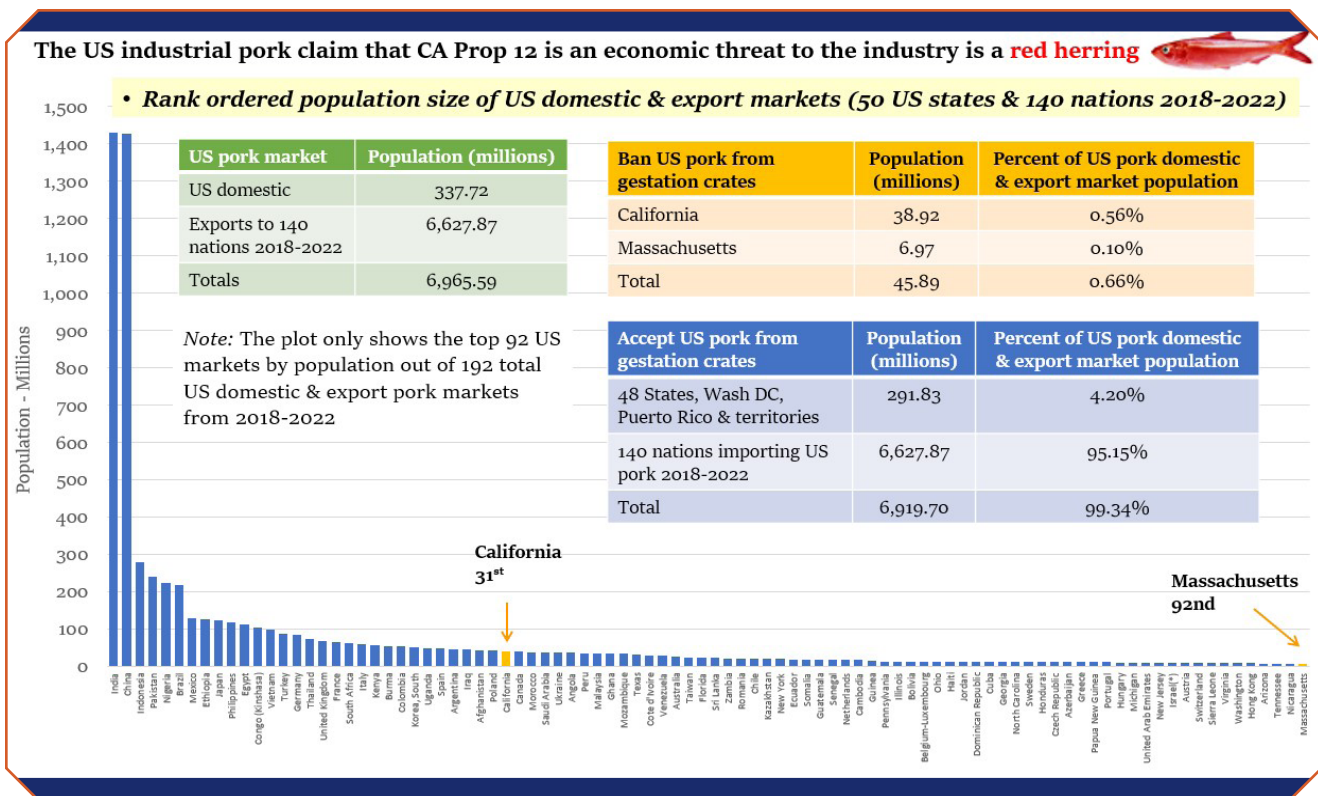
III. The pitfalls of gestation crates

A. The case for Prop 12 and Question 3: Pregnant pigs need and deserve more living space

1) The NPPC is misrepresenting the impacts of Prop 12 on American pig producers, **falsely saying that California is telling Iowa and Kansas pig producers how to farm.** They'd be wrong even if their claim had been correct that California alone represents 15 percent of U.S. pork sales. *But that number, it turns out, is exaggerated by as much as 300 percent. Both the California and Massachusetts ballot measure (Question 3) collectively affect just 6 percent of the sales of U.S.-produced pork.*


o California is just shy of 15 percent of domestic pork sales, but the U.S. pork industry sells to all **50 states and 139 other nations (between 2018 and 2023)**, with about 30 percent of American pork exported. California and Massachusetts represent just 10 percent of the market for U.S.-produced pork, given the volume of exports to Asia and other parts of the world, but the two states will require just 6 percent by volume of total U.S. production for pork compliant with Prop 12 and Question 3 because of exemptions for combined, frozen, and canned pork products.

- o Including domestic and foreign markets, 187 (48 states and 139 pork-importing nations) of 189 markets remain completely available to conventional pork from animals kept in extreme confinement.
- o Prop 12 and Question 3 exempt all combined, processed, precooked, and canned pork products (e.g. hot dogs, soups, and frozen pizzas containing pork products) (which represent about **42% of pork sales**). Prop 12 only covers whole, uncooked pork cuts like bacon or ribs. The NPPC has never factored that nearly half of all pork destined for these two states is not covered by the two ballot measures.
- o Given the finite demand for gestation-crate-free pork in California and Massachusetts, no pig producer has to change his or her ways because of Prop 12 and Q3 because the industry says **35 to 40% of sows** are already in group housing. Many of those group houses are compliant with Prop 12 already while minor adjustments in stocking density and other husbandry decisions would allow remaining group houses to produce Prop 12-compliant pork.



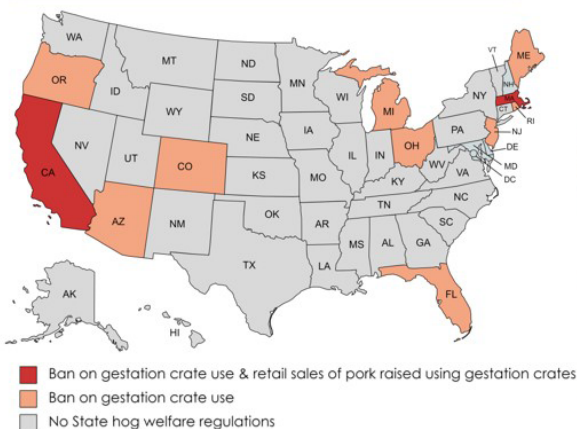
2) *The increasingly diversified pork industry is already deep into the transition away from gestation crates and toward group housing and these producers want to meet the demand in 2 of 50 states and then some.* Many of the **nation's largest pork producers publicly stated** that they would comply with Prop 12 even before the Supreme Court's decision, including **Tyson Foods, Smithfield Foods, Seaboard Foods, Hormel, and Clemens Food Group.** Prop 12 and Q3 provide critical market opportunities for thousands of rank-and-file farmers who don't use gestation crates and have made investments in more extensive and humane housing systems. There is no turning back on gestation crates. So much of the transition toward group has

been driven by corporate policies against gestation crates. McDonald's announced in 2012 that it "believes gestation stalls are not a sustainable production system for the future." Kroger announced that "a gestation crate-free environment is more humane and that the pork industry should work toward gestation crate-free housing." Costco said it wants "all of the hogs throughout our pork supply chain to be housed in groups" and said "this transition should be accomplished no later than 2022." There are so many indicators of public disfavor of the solitary confinement system, including New Jersey banning the crates with nearly unanimous votes in both chambers of its legislature.

The US industrial pork claim that CA Prop 12 is an economic threat to the industry is a red herring 

- Trend in US is towards eliminating use of the standard 2 ft x 7 ft sow gestation crates due to consumer pressure, retail and wholesale response to consumer pressure, and state legislation due to multiple, legitimate and documented animal welfare problems, public health concerns, and animal disease risks from their use.
- On July 26, 2023, a law banning use of sow gestation crates in New Jersey was signed by Gov. Phil Murphy, making New Jersey the 11th state to ban pig gestation crates.
- **Sixty major American food retailers** have policies against gestation crates or requiring sufficient opportunities for pregnant sows to move freely

Hog welfare laws by State, August 2023



<https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=103505>

3) **There is a different aspect of Chicken Little prognosticating by Big Pork: dozens of states will adopt differing state standards and create a patchwork of rules that will be impossible for the pork industry to accommodate.** The reality is, even two of the bluest states, California and Massachusetts, required ballot measures to restrict sales of pork and exclude pork from extreme confinement operations. No state is even flirting with sales restriction legislation.

o The fact is, the ballot initiative process is not available to citizens in any of the top five pig-producing states — Iowa, North Carolina, Minnesota, Indiana, and Illinois.

o What's more, when it comes to the states with the largest populations, and therefore the biggest demand for pork, there is no threat of sales restrictions in those states through the ballot measure process. Texas and New York do not allow statewide citizen initiatives, and Florida (which already has a ban on gestation crates) has a super-majority requirement that would be a complete barrier to entry for animal welfare advocates seeking sales restrictions.

o Of the eleven States to ban sow gestation crates, only five (Florida, Arizona, California, Maine, and Massachusetts) came about via ballot measures. The remaining six states with crate bans (Oregon, Colorado, Michigan, Ohio, Rhode Island, and New Jersey) came about via the conventional path of representative government rather than direct democracy.

B. The case against the EATS Act

1) **A transparent response to pending implementation of Prop 12, EATS is an attempt to subvert state elections in our nation after a conservative U.S. Supreme Court upheld this voter-approved statute** as a constitutional exercise of state authority. “In a functioning democracy, policy choices like these usually belong to the people and their elected representa-

tives,” wrote Justice Neil Gorsuch writing for the majority in the court’s May 2023 ruling. They are entitled to weigh the relevant “political and economic” costs and benefits for themselves and “try novel social and economic experiments” if they wish.” The NPPC’s dormant commerce challenge to Prop 12 fell on deaf ears when the high court considered it. The Supreme

EATS Acts backers claiming Prop 12 bans farrowing crates putting piglets at risk is **red herring**



- **A gestation crate is different from a farrowing crate**



Note: Farrowing (birthing & nursing) crates are NOT banned by CA Prop 12 or MA Question 3.

- Used for the 3-4 week period from birth until weaning when the sow is nursing her piglets
- Protects piglets from being crushed by sow by giving the piglet a “side escape route”

Nevertheless, the life of many U.S. breeding female pigs is one of immobilization & solitary confinement

- After reaching puberty in a group pen at about 7 months of age, she is bred, confined for four months (16 weeks) in a gestation crate, followed by one month (4 weeks) in a farrowing crate, followed by one week in a pen or crate for re-breeding.
- This is repeated for 6 or 7 pregnancies and she is then culled.
- Thus once reaching puberty, a breeding sow spends 20 out of every 21 weeks of her life in immobilized crate confinement (95% of her post-puberty life)

Court nullified the primary argument against Prop 12 and all that is left to the critics is just a brazen attempt to substitute the judgment of federal lawmakers for millions of voters who decided an issue in a fair election. In all, American voters cast 22 million ballots to ban gestation crates in five statewide elections.

2) A little-known beneficiary of the overturning of Prop 12 via the proposed EATS Act legislation is the Chinese Government, which already controls a quarter of U.S. pig production (including one million of the six million US breeding sows) through the massive domestic operations of Smithfield Foods, acquired in 2013 by the Wuhan Group.

- o Smithfield is the largest US pork producer with a 26% market share. No agricultural commodity group has a larger share of control by the Chinese than the pork industry.
- o Brazilian-based JBS has substantial US pork industry holdings.

- o Nullifying fairly conducted U.S. elections and the American values related to animal welfare that propelled supermajority votes in California and Massachusetts will be a glaring example of the misuse of federal authority, where distant federal lawmakers substitute their judgment for the values of Americans. Given the Chinese involvement in this effort to overturn American elections, it is a shocking abuse of federal power.
- o The EATS Act may drive thousands more pig farmers out of business by accelerating consolidation in American agriculture and turning many who stay in the business into contract farmers answering to Chinese- and Brazilian-owned companies' dictates (Smithfield and JBS).
- o As perhaps a worst-case scenario, the **new Chinese pig production model of high-rise "super confinement" swine buildings** could come to the US thanks to EATS enactment.

High rise pork production in China, 2022

- 3600 sows, piglets & finishing pigs per floor
- Pigs never leave their floor from birth to slaughter



An aerial view of the farm built in 2022 near Rongchang by Sichuan Tianzow Breeding Technology. The site has 2 buildings of 7 floors each, and 3600 sows, piglets and fatteners, per building.

3) Major segments of the pork industry oppose the EATS Act and they've made hundreds of millions in investments to accommodate the changing demand in America. There are pork producers, such as the **Clemens Food Group** (the number five American pork producer) and **Hormel**, that have shifted toward group housing only. Other big players, such as Tyson, already have some gestation-crate-free capacity and have publicly stated they are ready to meet Prop 12-triggered demand.

4) In the EATS Act, Congress is acting as if the public is opposed to efforts to give breeding pigs some space to move around. The reality is, the pork industry hasn't won on this issue just about anywhere.

- o The NPPC lost 5 of 5 ballot measures on gestation-crate confinement, each one by double-digit margins, with absolute landslides in California (63% "yes" vote) and Massachusetts (78% "yes" vote).
- o It lost 12 of 12 court cases challenging Prop 2 and Prop 12, with a SCOTUS ruling delivering the final judicial blow to the NPPC, thanks to the opinions of conservative justices Gorsuch, Thomas, and Coney Barrett.
- o The NPPC also lost the debate with **60 major food retailers**, including giants in food retail such as McDonald's, Costco, and Safeway. Very few major American food retailers have not made public declarations opposing gestation crates explicitly or implicitly (favoring the 5 Freedoms of Farm Animal Welfare).
- o In July, **Governor Phil Murphy signed a ban on gestation crates in New Jersey** after the Assembled passed a ban on gestation crates 73 to 1 and the Senate passed the measure 35 to 1. How much more of a consensus is needed to understand the deep dislike of gestation-crate confinement?

5) The never-ending Prop 12 complaining by the NPPC is about ideology, not supply chain issues, production capacity, or the ability of farmers to adjust to changing consumer demand. By supporting EATS, lawmakers are using the heavy hand of the federal government to try to subvert state rights and to pick winners and losers in the agri-food community. The Congress can play a constructive role in creating a relatively short runway to aid the transition to a crate-free future, but it's doing the opposite and trying to nullify state-based policies adopted by American citizens in fair elections where the pork industry trade association has plenty of money to get its message out.

6) The veal industry and the egg industry are also subjected to Prop 12 and Question 3 compliance to restrict cruel and extreme animal confinement. However, unlike the pork industry which continues to fight to maintain inhumane sow confinement and immobilization of the animals as a customary housing practice, the veal industry switched entirely away from extreme confinement crates while the egg industry invested billions in humane housing systems and opposes EATS.

7) The EATS Act is a modern-day version of Pandora's Box, with a host of unforeseen consequences for the agri-food sector. A new report from Harvard Law School says the EATS Act could roll back hundreds of animal health and food safety laws in other states including value-added state-protected agri-food products (e.g., Kentucky bourbon, Vidalia onions, Wisconsin Real Cheese, and 100% Kona Coffee). EATS could lead to increased pork industry consolidation and vertical integration since there would be no humane sales standards in place at the state or federal level.

IV. The U.S. Pork Industry in 2023

There are several serious challenges facing the US pork industry, but NPPC Prop 12 hyperbole aside, the banning of pork derived from sows in the standard 2-foot x 7-foot gestation crate for the California and Massachusetts pork markets is unlikely to be among them.

In brief: The US swine industry was hit hard by the U.S. trade war with China in 2018 and 2019 and then by the COVID-19 pandemic in 2020 that resulted in reductions in pork processing capacity. **Now pork producers are challenged by too much production and reduced domestic demand for pork, along with higher costs for feed, labor, interest, and other expenses.** Many hog producers have been losing \$20 to \$40 per head on every pig marketed during the first half of 2023.

- The biggest challenge to the U.S. pork industry is an excess supply of pork and lower domestic demand in 2023 vs. 2021 and 2022. However, pork export levels, especially to Mexico, are strong.
- At the farm level, negative profit margins are driven by low market hog prices, high input costs for feed, supplies, and labor, rapidly rising interest rates, and swine disease challenges.
- Persistently high production costs continue to be a major challenge to pig farmers' profitability. Average cost and breakeven levels are 9% higher than one year ago and have increased 60% over three years.
- Some industry experts project that because of reduced sow numbers and lower hog production in 2023, together with potentially lower feed costs, producers should see the profit margins from pork production improve by late 2023 and into 2024.
- The level of profit improvement will likely depend on increased consumer demand for pork products and continued strong pork export levels, as well as whether a pending U.S. drought raises grain prices and drives up feed costs again later in 2023.

The biggest current challenges to the US pork industry are:

- ***An excess supply of pork.*** The US pork industry produced a record 140.12 million hogs in 2022, and production is expected to increase slightly in 2023. This excess supply has led to lower pork prices, which have squeezed profit margins for pork producers.
- ***Lower domestic demand for pork.*** The demand for pork in the US has been declining in recent years, due to many factors, including the rise of plant-based alternatives and concerns about the health risks of processed meats.
- ***Increased feed costs.*** The cost of feed, which is the largest input cost for pork producers, has been rising in recent years. This is due to several factors, including the increased use of corn and soybean meal in ethanol production and the drought in the US Midwest.
- ***Labor shortages.*** The pork industry is facing a labor shortage, as it is difficult to find and retain workers in rural areas where farms are located. This is a challenge for the industry, as it needs to have enough workers to care for the pigs and process the meat.
- ***Disease outbreak risks.*** The pork industry is facing the challenge of disease outbreaks including foreign animal diseases such as African swine fever (ASF) as well as various endemic infectious diseases that require high biosecurity inputs and costly disease control measures.

Porkonomics: The current economic situation of the US pork industry is mixed, with some positive and negative factors affecting this important agri-food sector:

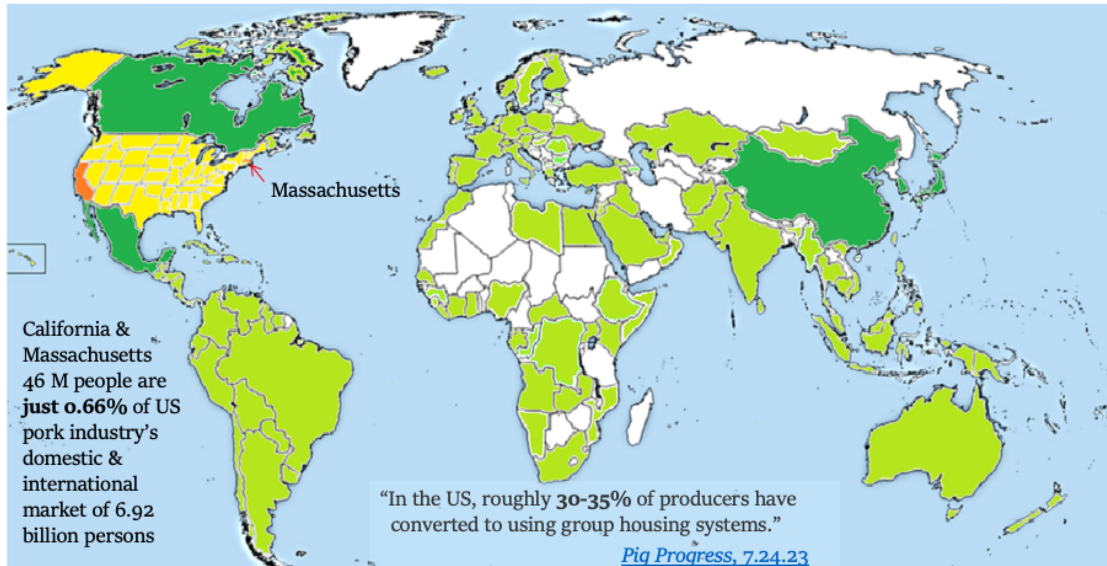
- **Production:** The U.S. pork industry produced about 27.4 billion pounds of pork in 2023, up 1.4 percent from 2022. Production is expected to fall slightly in 2024 due to lower farrowing intentions and smaller litter sizes. The industry is dominated by a few large pig producers, mostly in the Midwest and North Carolina, and relies on feed inputs such as corn and soybean meal.

- **Exports:** The US pork industry is expected to export about 6.91 billion pounds of pork in 2023, up from 6.8 billion pounds in 2022. Exports are projected to increase slightly in 2024 to 6.98 billion pounds, based on competitive US pork prices and diminished competition from other international pork exporters. The main export markets for US pork are Mexico, Japan, China, Canada, and South Korea.
- **Prices:** At the producer level, the U.S. pork industry faces lower prices in 2023 compared to 2022, due to increased domestic supply and reduced demand

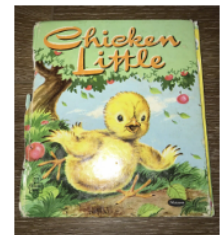
The US industrial pork claim that CA Prop 12 is an economic threat to the industry is a red herring



- The U.S. pork industry sells to 50 states & 140 countries but just two markets (CA & MA) are off limits to US pork from conventional gestation crates



- The US exported pork to at least 140 nations from 2018-2022
- An adequate supply of US pork producers with group housed breeding sows exists to meet CA & MA pork demand



Accept US pork from conventional gestation crates

- 48 US states, Wash DC, Puerto Rico & all US territories
- China, Japan, Mexico, Canada, S Korea: imported >\$500 M US pork per year, 2018-2022
- 135 nations: imported <\$500 M US pork per year, 2018-2022 (median \$128.3 M per year per nation)

Ban US pork from conventional gestation crates

- Two US states: California & Massachusetts

Source: USDA Foreign Agricultural Service <https://apps.fas.usda.gov/gats/default.aspx>

from some key export markets. The average hog price so far in 2023 is \$64.50 per hundredweight, down from \$69.60 in 2022. The average wholesale pork price in 2023 is \$93.30 per hundredweight, down from \$97.80 in 2022. The average retail pork price in 2023 is \$4.13 per pound, down from \$4.18 in 2022.

- Economic impact: The U.S. pork industry is a major contributor to the US economy and the world's most consumed meat. It supports more than 600,000 jobs, generates over \$28 billion in gross

cash receipts, and adds over \$57 billion in GDP. It also exports about 25% of its production, adding value to each pig marketed. The industry generates significant economic activity through its purchase of inputs, such as corn and soybean meal, which account for an estimated 56% of total US production costs. The EATS Act threatens to accelerate the demise of family farmers and enhance consolidation in the American pork industry, threatening to distance the practices of the industry from the values of its customers.

Momentum against gestation crates building worldwide for years

- 34 nations w/ complete or partial bans on gestation crate use as of Aug 2023



North America

- 11 US states
- Canada (in 2029)



Western & Central Europe

- 27 EU nations (since 2013, partial)
- UK, Norway, & Switzerland



Oceania

- Australia (Tasmania) & New Zealand

- No anti-gestation crate movement in Asia
- US & China are the two major gestation crate nations

- Ban on gestation crate use & retail sales of pork raised using gestation crates
- Ban on gestation crate use
- Ban on gestation crates & farrowing crates (Sweden, Norway, Switzerland)

- Ban on gestation crates after the first four weeks of pregnancy
- Voluntary phase out
- No State or Country hog welfare regulations

Addendum A

Agribusiness interests and their allies have lost 12 successive decisions in federal court trying to overturn Prop 2 in California, A.B. 1437 (requiring egg sales in California to comply with Prop 2 standards), and Prop 12 in California. The SCOTUS decision marks the exhaustion of the legal attacks by agribusiness on these state laws. In the preceding series of challenges to Prop 12, the **9th Circuit rejected a challenge to California's Prop 12** in October 2020 by the North American Meat Institute, **the 9th Circuit in July 2021** turned away the NPPC/AFBF challenge (that's the case that went to SCOTUS), and U.S. District Court for the Northern District of Iowa rejected a similar challenge from the Iowa Pork Producers Council. Here is a roster of cases brought in the wake of Prop 2, A.B. 1437, and Prop 12, with all decisions favoring the state of California and adverse to the plaintiffs.

- *Cramer v. Harris et al.* – egg producer lawsuit against California's Prop 2.
 - 10/02/14 - **District Court** dismisses the case for lack of standing. *Cramer v. Harris*, No. CV 12-3130-JFW, 2012 WL 13059699 (C.D. Cal. Sept. 12, 2012).
 - 02/04/15 - **United States Court of Appeals for the 9th Circuit** upholds dismissal. No. CV 12-3130-JFW, 2012 WL 13059699 (C.D. Cal. Sept. 12, 2012), aff'd sub. nom. *Cramer v. Harris*, 591 Fed. App'x. 634 (9th Cir. 2015).
- *Missouri v. Harris* - six states challenged AB 1437.
 - 06/30/14 - **District Court** dismisses the case for lack of standing. *State of Missouri v. Harris*, No. 2:14-cv-00341-KJM-KJN (E.D. Cal. Jun. 30, 2014).
 - 01/17/16 - **United States Court of Appeals for the 9th Circuit** upholds dismissal. *State of Missouri ex rel. Koster v. Harris*, No. 14-17111 (9th Cir. 2016).
 - 05/30/17 - **Supreme Court** denies cert. 847 F.3d 646 (9th Cir. 2017), cert denied sub. nom., *Missouri ex rel. v. Becerra*, 137 S. Ct. 2188 (2017).
- *Missouri v. California* – similar coalition of states as in the *Missouri v. Harris*.
 - 10/02/14 - **District Court** dismisses the case for lack of standing. *State of Missouri, et al. v. Harris, et al.*, No. 2:14-cv-00341-KJM-KJN (E.D. Cal. Oct. 2, 2014).
 - 11/17/16 - **United States Court of Appeals for the 9th Circuit** upholds dismissal. *State of Missouri v. Harris*, No. 14-17111 (9th Cir. Nov. 11, 2016).
 - 01/07/19 – **Supreme Court** denies cert. 139 S. Ct. 859 (2019)
- *North American Meat Institute v. Becerra* – meat industry challenge to Proposition 12.
 - 11/22/19 – **District Court** denied NAMI's request for preliminary injunction. *N. Am. Meat Inst. v. Becerra*, 420 F. Supp. 3d 1014 (C.D. Cal. 2019) .
 - 10/15/20 - **United States Court of Appeals for the 9th Circuit** affirms denial. *N. Am. Meat Inst. v. Becerra*, No. 19-56408 D.C. No. 2:19-cv-08569-CAS-FFM (9th Cir. Oct. 15, 2020).
 - 06/28/21 - **Supreme Court** declined to review the denial of NAMI's requested preliminary injunction. 825 F. App'x 518 (9th Cir. 2020).
- *Natl. Pork Producers Council v. Ross* – pork industry challenge to Proposition 12.
 - 04/27/20 - **District Court** for the Southern District of California dismisses plaintiffs claims. 456 F. Supp. 3d 1201 (S.D. Cal. 2020).
 - 07/28/20- **United States Court of Appeals for the 9th Circuit** affirms lower court dismissal. *Nat'l Pork Producers Council v. Ross*, 2021 WL 3179247 (9th Cir. July 28, 2021).
 - 05/11/23 – **United States Supreme Court** upholds 9th Circuit decision and Prop 12. *Nat'l Pork Producers Council v. Ross*, Case No. 20-55631
AWA/CHE SCOTUS amicus brief can be found [here](#).
Veterinarian amicus brief can be found [here](#).
- *Iowa Pork Producers Association v. Bonta* – Iowa pork industry challenge to Proposition 12, filed in May 2021.
 - 08/23/21 – **District Court** of the Northern District of Iowa dismisses complaint. *Iowa Pork Producers Association v. Bonta* No. 21-CV-3018-CJW-MAR (N.D. IA. Aug. 23, 2021).

Addendum B: States restricting gestation crates (2002 to 2023)

Eleven states restrict the use of gestation crates.

- Four states via ballot initiatives (Florida, Arizona, California, and Massachusetts)
- Six states via the legislative process (Oregon, Colorado, Maine, Michigan, Rhode Island, and New Jersey)
- One state via regulation, through the Ohio Livestock Board.

The two tables below summarize the ballot initiatives, legislation, and regulations enacted between 2002 and 2023 which ban swine gestation crates in these 11 states.

Table 1: Voting results of four swine gestation crate bans via ballot initiative

No.	State	Year	Ballot measure	Yes votes	% Yes	No votes	% No
1	Florida	2002	Amendment 10	2,609,994	54.75	2,155,911	42.25
2	Arizona	2006	Proposition 204	926,913	61.96	569,190	38.04
3A	California	2008	Proposition 2	8,203,769	63.42	4,731,738	36.58
3B	California	2018	Proposition 12	7,516,095	62.65	4,481,267	37.35
4	Massachusetts	2016	Question 3	2,530,143	77.64	728,654	22.36
Totals out of 34,453,674 votes cast				21,786,914	63.23	12,666,760	37.76

Table 2: Eleven US States with gestation crate restrictions

No.	State	Bill or ballot initiative name	Passed	Takes effect	Passed via ballot initiative?	Hog production 2023 (lb)	State rank
1	Florida	Amendment 10	2002	2008	Yes	0	50th
2	Arizona	Proposition 204	2006	2012	Yes	63.6 M	26th
3	Oregon	Senate Bill 694	2007	2012	No - legislation	2.9 M	36th
4	California	Proposition 2	2008	2015	Yes	21.8 M	31st
		Proposition 12	2018	2023	Yes		
5	Colorado	Senate Bill 08-201	2008	2018	No - legislation	237.5 M	18th
6	Maine	LD 1021	2009	2011	No - legislation	2.9 M	37th
7	Michigan	Public Act 117 of 2009	2009	2025	No - legislation	708 M	12th
8	Ohio	Ohio Admin. Code §901:12-8	2010	2026	No - regulation	1,400 M	8th
9	Rhode Island	2012 -- S 2191	2012	2013	No - legislation	0.773 M	47th
10	Massachusetts	Question 3	2016	2022	Yes	4.1 M	35th
11	New Jersey	Bill A1970	2023	2026	No - legislation	0.815 M	46th
Totals	11 states					2,442 M	



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