

Supreme Court's ruling on humane treatment of pigs could catalyze a wave of new animal welfare laws

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Sows in gestation crates at a breeding facility in Waverly, Va. Credit: [Humane Society of the U.S./Wikimedia Commons](#), [CC BY](#)

Should California be able to require higher welfare standards for farm animals raised in other states if products from those animals are to be sold in California? On May 11, 2023, the U.S. Supreme Court upheld California's position by a 5-4 vote in [National Pork Producers Council v. Ross](#).

While the ruling was fractured and reflected complex legal questions, it is a major victory for those working to improve farm [animal welfare](#). A number of [states](#) will undoubtedly take advantage of the power that the Supreme Court has recognized.

As a [specialist in animal law](#), I expect that this will result in a patchwork of laws that are likely to make national meat producers very uncomfortable. Ultimately, it could push Congress to set [federal standards](#).

More indoor space for sows

Pork producers sued California over a law that the state's voters [adopted in 2018](#) via ballot initiative with over 63% approval. It set new conditions for raising hogs, veal calves and egg-laying chickens whose meat or eggs are sold in California. The state produces virtually no [pork](#), but represents [about 15% of the U.S. pork market](#).

At [most commercial hog farms](#), pregnant sows are kept in pens called gestation crates that measure about 2 feet by 7 feet—enough room for the animals to sit, stand and lie down, but [not enough to turn around](#). California's law requires that each sow must have [at least 24 square feet of floor space](#)—nearly double the amount that most now get. It does not require farmers to raise free-range pigs; just provide more square footage for hogs in buildings.

The [National Pork Producers Council](#) argued that this requirement [imposed heavy compliance costs](#) on farmers across the U.S., since large hog farms may house [thousands of sows](#), and that it restricted interstate commerce. The Constitution's commerce clause delegates authority to regulate interstate commerce [to the federal government](#). In a series of cases over the past 50 years, the Supreme Court has made clear that it will strike down any state law that seeks to control commerce in another

state or [give preference to in-state commerce](#).

States control farm animal welfare

Congress has remained mute on standards for handling farm animals, which are [not covered under the 1966 Animal Welfare Act](#).

Consequently, each state regulates this issue within its borders.

For example, in recent years, nine states have [outlawed housing egg-laying chickens in "battery cages"](#) that have been the industry standard for decades. These wire enclosures are so small that [the birds cannot spread their wings](#).

And [nine states in addition to California](#) have adopted laws requiring [pork producers](#) to phase out gestation crates. Massachusetts' law, like California's, would also apply to retail sales of pork raised elsewhere, but [its enforcement has been on hold](#) pending the Supreme Court's ruling in the California case.

California's market power

The California law says that if producers want to sell pork in California, they must raise pigs under conditions that comply with the state's regulations. Farmers do not have to meet these standards unless they want to sell in California. The same requirement is applied to producers located in California and those based elsewhere, so the law does not directly discriminate between states in a way that would constitute a clear commerce clause violation.

Producers of [eggs](#) and [veal](#) that sell in California are on track to implement new space requirements for their animals under the law. But instead of working out how to comply, the pork industry sought to have the courts set the California law aside.

However, as the Supreme Court noted, major producers, including [Hormel](#) and [Tyson](#), have said they will be able to comply with the California standard. Niman Ranch, a network of family farmers and ranchers who raise livestock humanely and sustainably, filed an amicus brief with the Supreme Court [supporting California](#).

A fractured verdict

In rejecting the pork industry's position, justices in the majority disagreed as to why the California law should be upheld. Some held that pork producers had not proved that the law would substantially interfere with interstate commerce. Others argued that regardless of the degree of interference, it was inappropriate to ask courts to balance compliance costs for the industry against California voters' moral concerns about animal welfare.

"While the Constitution addresses many weighty issues," Justice Neil Gorsuch [wrote for the majority](#), "the type of pork chops California merchants may sell is not on that list." Justices Clarence Thomas, Sonia Sotomayor, Elena Kagan and Amy Coney Barrett largely supported Gorsuch's opinion.

Similarly, dissenting justices differed as to why the California law posed a constitutional problem. Justices John Roberts, Samuel Alito and Ketanji Brown Jackson asserted that the substantial interference requirement had been met, and they would have remanded the case back to the 9th Circuit Court of Appeals. Only Justice Brett Kavanaugh held that the California law should be held void because the positive animal welfare outcomes were not substantial enough to overcome the increased cost it imposed on pork producers.

Beyond pork

Farmers and animal welfare advocates understand that with this win, states with the most progressive animal welfare policies—primarily West Coast and Northeast states—will be able to effectively set national standards for the well-being of many agricultural animals, including chickens, dairy cows and cattle. Conceivably, California might also be able to require basic conditions for human labor, such as minimum wage standards, associated with products sold in California.

I expect that within five years, Congress will enact national legislation on farm animal welfare issues that will preempt differing state laws. It is impossible to predict now whether a new national law would improve animal welfare or adopt existing poor [welfare](#) practices—but California's win represents a major victory for advocates who have sought for years to improve conditions for [farm animals](#) across the U.S.

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