

Proposition 12:

Establishes New Standards for Confinement of Specified Farm Animals; Bans Sale of Noncomplying Products.

Initiative Statute

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I. EXECUTIVE SUMMARY

Proposition 12, the *Prevention of Cruelty to Farm Animals Act*, would do two things: (1) place specific size requirements on the coops and cages used to contain egg-laying hens, breeding pigs, and veal calves; and (2) ban all businesses from selling food products in California that come from animals not raised in compliance with those sizes.¹ If passed, California businesses would have until 2022 to comply with Proposition 12.² Proposition 12 requires a simple majority vote by the people to pass—i.e. more than 50% of all voters who vote.³

A **YES** vote means farmers would be required to provide more space for egg-laying hens, breeding pigs, and calves raised for veal, and California businesses would be banned from selling eggs or uncooked pork or veal that came from animals housed in ways that did not meet these requirements.

A **NO** vote means current space requirements for confining egg-laying hens, breeding pigs, and calves raised for veal would continue to apply, and current laws for California businesses selling eggs not meeting current space requirements for hens would remain in effect.⁴

II. BACKGROUND

A. Agriculture is a Major Industry in California

The California Department of Food and Agriculture (CDFA) reports that, with over \$46 billion in agricultural income in 2016, California leads the nation in farming production.⁵ It almost doubles Iowa in agricultural income, the nation's second largest agricultural producer.⁶ Roughly two-thirds of the California agricultural revenues are derived from crops while the other one-third of revenues are generated mainly by livestock commodities.⁷ In 2016, California livestock production—dairy, meat, poultry and eggs—was valued at more than \$10 billion.⁸ California also imports food; most of the pork and eggs Californians eat come from other states.⁹ CDFA is responsible for promoting California agriculture and overseeing animal health and food safety. CDFA partners with county agricultural commissioners to conduct many of its activities.¹⁰

¹ Cal. Proposition 12, § 3 (2018).

² Cal. Proposition 12, § 4 (2018).

³ Cal. Constitution Art. II, § 10(a).

⁴ *Proposition 12—Prevention of Cruelty to Farm Animals Act (2018)*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2018/prop12-110618.pdf> (last visited Oct. 10, 2018).

⁵ *California Agricultural Statistics Review 2016-2017*, <https://www.cdfa.ca.gov/Statistics/PDFs/2016-17AgReport.pdf> (last visited Oct. 8, 2018).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Proposition 12—Prevention of Cruelty to Farm Animals Act (2018)*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2018/prop12-110618.pdf> (last visited Oct. 10, 2018).

¹⁰ *Id.*

B. Existing Law on Animal Cruelty

Cruelty to animals has been illegal in California and across the country for over a century.¹¹ California's laws on animal cruelty are extensive, covering a wide range of behaviors and types of animals, including farm animals.¹² For example, anyone who keeps an animal in an enclosed area is required to provide it with an exercise area and give it access to shelter, food, and water.¹³ Depending on the violation, a person could be found guilty of a misdemeanor or felony, punishable by fines or imprisonment.¹⁴ Moreover, public interest in the treatment of farm animals is growing.¹⁵ In particular, public concern about keeping farm animals in cages and crates has increased.¹⁶ For instance, many major grocery stores, restaurants, and other companies are moving towards buying and selling food from suppliers that give farm animals increased living spaces, such as only purchasing eggs from farmers who use "cage-free" housing for hens.¹⁷ A growing public interest and concern for "fundamental decencies" for animals are what led to Proposition 12's predecessor, Proposition 2 (2008).¹⁸

In 2008, 68.5% of California voters enacted Proposition 2, which amended the Health and Safety code to prohibit confining animals in ways that keep them from turning around freely, standing up, sitting down, and fully extending their limbs.¹⁹ It became operative on January 1, 2015. Like Proposition 12, Proposition 2 targeted farm animals, including pregnant pigs, egg-laying hens, and calves raised for veal.²⁰ However, it did not provide specific square foot requirements when it defined "confinement." Rather, the size restrictions were based on animal behavior, such as the ability to move freely.²¹ Amongst other things, opponents to Proposition 2 argued that the lack of specific size dimensions could not be implemented reasonably because the standards were too vague, prompting litigation.²²

On February 4, 2015, the U.S. Court of Appeals for the Ninth Circuit upheld Proposition 2. The court decided that Proposition 2 was not unconstitutionally vague because chickens have a wing span and a turning radius that can be "observed and measured," and, thus, any reasonable person could determine the dimensions of an appropriate confinement that will comply with

¹¹ Cal. Penal Code § 595, *et seq.*

¹² E.A. Gjelten, *Animal Cruelty Laws in California*, LAWYERS.COM, <https://www.lawyers.com/legal-info/criminal/animal-law/animal-cruelty-laws-in-california.html> (last visited Oct. 8, 2018).

¹³ Cal. Penal Code § 597.

¹⁴ *See* Cal. Penal Code § 595, *et seq.*; *see also* Cal. Health and Safety Code §§ 25590-25994.

¹⁵ Monique Coppola, *Support Animal Welfare in 2018!*, MEDIA IN THE PUBLIC INTEREST, <https://www.mediainthepublicinterest.org/animal-welfare> (last visited Oct. 10, 2018).

¹⁶ Patrick May, *Cage-Free Hens: Just the Beginning for California Animals*, THE MERCURY NEWS, Jun. 29, 2018, <https://www.mercurynews.com/2018/06/29/egg-laying-hens-unite-you-have-nothing-to-lose-but-your-cages/> (last visited Oct. 8, 2018).

¹⁷ *Proposition 12—Prevention of Cruelty to Farm Animals Act (2018)*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2018/prop12-110618.pdf> (last visited Oct. 10, 2018).

¹⁸ New York Times, Op-Ed, THE NEW YORK TIMES, Oct. 8, 2008, <https://www.nytimes.com/2008/10/09/opinion/09thu3.html> (last visited Oct. 8, 2018).

¹⁹ Cal. Health & Safety Code § 25990.

²⁰ *Proposition 12—Prevention of Cruelty to Farm Animals Act (2018)*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2018/prop12-110618.pdf> (last visited Oct. 10, 2018).

²¹ Cal. Health & Safety Code § 25990, *et seq.*

²² *California Proposition 2, Standards for Confining Farm Animals 2008*, BALLOTPEdia, [https://ballotpedia.org/California_Proposition_2_Standards_for_Confining_Farm_Animals_\(2008\)](https://ballotpedia.org/California_Proposition_2_Standards_for_Confining_Farm_Animals_(2008)) (last visited Oct. 10, 2018).

Proposition 2.²³ According to the court, “[w]hile it may have been preferable . . . that an enclosure for egg-laying hens must provide a specified minimum amount of space per bird, the [Constitution] does not demand ‘perfect clarity’ or ‘precise guidance.’”²⁴

Similarly in another case, opponents challenged Proposition 2 on other constitutional grounds. Missouri and five other states sued in federal court to block Proposition 2, arguing that it unconstitutionally conflicts with federal shipping standards for eggs and hinders interstate commerce because of its impact on the market. The court dismissed the case for lack of standing—i.e. the six states had no right to even initiate the lawsuit and the court did not decide the substantive arguments.²⁵ The states appealed, but the appellate court also concluded that the other states failed to demonstrate how the law impacted them as states and their residents collectively, rather than individual egg producers alone.²⁶

More recently in 2017, Missouri and eleven other states bypassed the lower courts and asked the U.S. Supreme Court directly to block Proposition 2 (now California Health & Safety Code sections 25990-25994) based on those same arguments. The Supreme Court has invited the U.S. Solicitor General to express its view on the case before deciding whether to hear the case.²⁷

III. PROPOSED LAW

Proposition 12 amends California Health and Safety Code Sections 25990-25993 and adds Section 25993.1. The key changes would increase the minimum space requirements for egg-laying hens, breeding pigs, and calves raised for veal and would ban the sale of products that do not meet the new standards.²⁸

Under current law, there is no set standard providing a specific amount of space that egg-laying hens, breeding pigs, and calves raised for veal are required to have. Instead, the standard for all animals is that they "must be able to turn around freely, lie down, stand up and extend their limbs."²⁹

Proposition 12 would require farmers to provide more space for egg-laying hens, breeding pigs, and calves raised for veal.³⁰ The changes would be phased in over the next several years as follows:³¹

- Starting in 2020: Egg-laying hens would be required to have 1 square foot of floor space.³² Each calf raised for veal would be required to have 43 square feet of floor space.³³

²³ *Cramer v. Harris*, 591 Fed.Appx. 634, 635 (2015).

²⁴ *Id.*

²⁵ *Missouri v. Harris* (2014) 58 F.Supp.3d 1059, 1077; see also Amie Medley, *Calif. Egg Regs May Leave Farmers Scrambling*, LAW 360, Dec. 10, 2014, <https://www.law360.com/articles/602944/calif-egg-regs-may-leave-farmers-scrambling> (last visited Oct. 8, 2018).

²⁶ *Missouri ex rel. Koster v. Harris*, 847 F.3d 646, 652 (2017).

²⁷ *Missouri v. California*, Docket No. 220148, SCOTUS BLOG, http://ag.nv.gov/uploadedFiles/agnv.gov/Content/News/PR/PR_Docs/2017/2017-12-04_Eggs_Final_Filing.pdf (last visited Oct. 10, 2018).

²⁸ NOVEMBER 2018 VOTER GUIDE, at 68-69.

²⁹ NOVEMBER 2018 VOTER GUIDE at 69.

³⁰ *Id.* at 68.

³¹ *Id.*

- Starting in 2022: Egg-laying hens must be in cage-free housing.³⁴ Breeding pigs would be required to have 24 square feet of floor space per pig.³⁵

In addition to providing specific area requirements for animals covered by the act, Proposition 12 makes it illegal for businesses to knowingly sell eggs, liquid eggs, uncooked pork, or veal that come from animals that are housed in ways that do not meet the new requirements.³⁶ This ban applies to products from both California and from out-of-state.³⁷ The ban would generally not apply to foods that contain the products as ingredients or toppings (such as cookie dough or pizza).³⁸

Violation of the sales ban or housing requirements would be a misdemeanor and those found in violation of the sales ban could also be subject to a fine in civil court.³⁹ The act permits a "good faith" defense to actions brought under the act if a business owner or operator relied on written certification from a supplier that the animal product they were purchasing came from a facility that complied with act.⁴⁰

It should be noted that Section 8 of Proposition 12 would permit amendment of the act only by a vote of four fifths of both houses of the Legislature.⁴¹ Additionally, any amendment to the act must be "consistent with and further the purposes" of the Act.⁴² These requirements will make it difficult to amend Proposition 12, but do provide at least the slim possibility of amendment without a return to the initiative process.

Section 9 of Proposition 12 provides that should any provision or application of the act be found unconstitutional, then the parts that are not affected should remain in place.⁴³ To that end, Proposition 12 specifically states that any unconstitutional provisions are severable.⁴⁴

³² *Id.* at 69.

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Cal. Proposition 12, § 7 (2018).

⁴¹ Cal. Proposition 12, § 8 (2018).

⁴² *Id.*

⁴³ Cal. Proposition 12, § 9 (2018).

⁴⁴ *Id.*

Figure 1

Minimum Space Requirements Under Current Law and Proposition 12
Square Footage Per Animal

Farm Animal	Current Law ^a	Proposition 12 ^a	
		Starting in 2020	Starting in 2022
Egg-laying hen	Must be able to turn around freely, lie down, stand up, and fully extend their limbs. ^b	1 square foot of floor space	Cage-free housing ^c
Breeding pig		—	24 square feet of floor space
Calf raised for veal		43 square feet of floor space	Unchanged (43 square feet)

^a Current law and Proposition 12 both include some exceptions to minimum space requirements.
^b State regulations generally require 0.8 square feet of floor space per egg-laying hen. There are no similar regulations for breeding pigs or calves raised for veal.
^c Cage-free includes indoor housing systems that provide 1 to 1.5 square feet of floor space per hen and allow hens to move around inside a building.

IV. DRAFTING ISSUES

Section 6 of Proposition 12 would change the enforcement of existing law by adding several provisions to California Health and Safety Code Section 25993.⁴⁵ First, it requires the CDFA to promulgate rules and regulations for the implementation of the act by September 1, 2019, but does not specify a source of funding for the endeavor.⁴⁶ Second, it provides that any person in violation of the act is guilty of a misdemeanor and is to be punished either by imprisonment or by paying a fine not to exceed \$1000.⁴⁷ However, the act fails to specify who the fine should be paid to. Perhaps this is one of the rules that CDFA would need to promulgate in order to effectively carry out the act.

V. CONSTITUTIONAL ISSUES

A. Preemption

When a federal law and a state law conflict, the federal law will govern when: 1) it is the expressed intent of the federal government that federal law be applied; or 2) when the federal law and state law conflict in such a way that compliance with both is impossible.⁴⁸ For example, in *Florida Lime and Avocado Grower, Inc. v. Paul*,⁴⁹ the Supreme Court evaluated the constitutionality of a California statute that set higher standards for avocados than those set by the United States Secretary of Agriculture.⁵⁰ The statute also prohibited the sale and

⁴⁵ Cal. Proposition 12, § 6 (2018).

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Fla. Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–44 (1963).

⁴⁹ *Id.*

⁵⁰ *Id.* at 133-134.

transportation of avocados that failed to meet the higher California standard.⁵¹ The Court found that it was constitutional for California to have a standard for avocados that exceeded the minimum federal standard because it meant the avocados met both the federal and California standards.⁵² When compliance with both federal law and state law is possible, there is no reason to displace the state law.⁵³

Although Proposition 12 would set space requirement standards for egg-laying hens, breeding pigs, and calves raised for veal that are higher than those of many other states or those set by the United States Department of Food and Agriculture, Proposition 12 is unlikely to be preempted unless there is a change in federal law that either expressly preempts the standards set by Proposition 12 or a federal law conflicts with Proposition 12 in such a way that it is impossible for a person to comply with both. Preemption issues may arise with H.R. 2887, a bill currently before Congress which, if passed, would prohibit states from regulating those who participate in interstate commerce unless they are physically present in the state.⁵⁴

In the event that a federal law made any part of Proposition 12 unconstitutional, Section 9 of Proposition 12 provides that any unconstitutional issues are severable.⁵⁵ This means that the parts of Proposition 12 that are not found unconstitutional would still remain effective law as long as they meet the severability test laid out in California law. Under California law as set out in *People's Advocate, Inc. v. Superior Court*,⁵⁶ severance is permitted only when the remaining provisions are grammatically, functionally, and volitionally severable.⁵⁷ This essentially means that the remaining provisions must make grammatical sense, be able to function on their own, and still be what the voters would have adopted once the invalid provisions are severed.

B. Dormant Commerce Clause

State laws may be struck down if they violate the Commerce Clause of the United States Constitution.⁵⁸ This is the “dormant Commerce Clause” doctrine, which courts have inferred from the text of the Constitution. Courts have interpreted the Commerce Clause to prohibit state laws that protect state businesses at the expense of out-of-state businesses or unduly burden interstate commerce.

Congress has the power to regulate interstate commerce. However, even if Congress has not regulated a particular area of commerce, states cannot simply regulate interstate commerce as they please.⁵⁹ A state law is unconstitutional if it protects its own businesses by making it more difficult for out-of-state business to sell in the state.⁶⁰ Even if a state law applies equally to in-state and out-of-state businesses, however, it is still unconstitutional if the burdens it places on

⁵¹ *Id.* at 133.

⁵² *Id.* at 143.

⁵³ *Id.*

⁵⁴ Current Bill Status of H.R. 2887 (2017-2018 Session), *No Regulation Without Representation Act of 2017*, <https://www.congress.gov/bill/115th-congress/house-bill/2887/text> (last visited Oct. 10, 2018).

⁵⁵ Cal. Proposition 12, § 9 (2018).

⁵⁶ *People's Advocate, Inc. v. Superior Court*, 181 Cal. App. 3d 316 (1986).

⁵⁷ *Id.* at 330–33.

⁵⁸ U.S. Constitution, Art. I, § 8, Clause 3.

⁵⁹ *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U.S. 525, 532 (1949).

⁶⁰ *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978).

interstate commerce outweigh its alleged benefits.⁶¹ Whether a burden will be tolerated depends on the nature of the local interest involved and whether it could be promoted with a less burdensome alternative.⁶²

For example, it is lawful for Minnesota to ban the retail sale of milk in plastic, nonreturnable, nonrefillable containers because the state law applies to milk in plastic containers produced in Minnesota as well as milk imported from other states. The state law would violate the Commerce Clause if it applied only to out-of-state milk containers or if it was otherwise found to favor Minnesota milk products over out-of-state products.⁶³ Likewise, California law requires milk sold to contain a certain percentage of milk solids that federal law does not require, which is allowed because California's stricter requirements apply equally to California-produced milk and other states' milk and so does not discriminate against or excessively burden interstate commerce.⁶⁴

Because Section 3 of Proposition 12 prohibits all farms from selling eggs, pork, or veal in California that come from animals raised in “cruel” conditions, and not solely out-of-state farms, it is likely constitutional as long as California’s interest in preventing animal cruelty and food poisoning actually outweighs the burden it would place on interstate commerce.⁶⁵ As mentioned above, if Section 3 is found unconstitutional for any reason, it will be severed from the rest of Proposition 12’s enactment.

VI. POLICY CONSIDERATIONS

A. Legislative Analyst’s Office Projected Fiscal Impact

Proposition 12 would likely have two economic impacts: an increase in consumer prices for eggs, pork, and veal, and a small reduction in state government revenue. First, farmers will have to remodel or build new housing for animals in order to comply—such as installing new housing for hens, pigs, or calves raised for veal. As a result, the increased costs farmers will incur are likely to be passed on to consumers who purchase the products. Furthermore, it may take years for both in-state and out-of-state farmers who sell their product in California to comply. If farmers cannot supply enough eggs, pork, or veal to meet the demand in California, the decrease in supply would result in an increase in food prices until farmers can meet demand.

Second, because Proposition 12 could increase costs for some California farmers who produce eggs, pork, and veal, some farmers may choose to reduce or stop production. This will decrease state income tax revenues from these businesses in the future. A reduction likely would not be more than several million dollars each year. Additionally, CDFA’s workload would be increased in order to enforce Proposition 12. For example, monitoring farmers in California and other states that sell to California to ensure that they properly house their animals and making

⁶¹ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

⁶² *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471 (1981).

⁶³ *Id.*

⁶⁴ California Milk Standards, CALIFORNIA DEPT. FOOD & AGRICULTURE, https://www.cdfa.ca.gov/ahfss/Milk_and_Dairy_Food_Safety/Milk_Standards.html (last visited Oct. 8, 2018).

⁶⁵ Cal. Proposition 12, § 3(b) (2018).

sure the products sold in California comply with the measure's requirements could cost up to \$10 million annually.⁶⁶

B. Proponent's Arguments

Proponents of Proposition 12 include the Humane Society of the United States, American Society for the Prevention of Cruelty to Animals (ASPCA) and almost 500 California veterinarians.⁶⁷ Proponents of Proposition 12 focus on the prevention of cruelty, reduced risk of salmonella, increased jobs, and a sensible strengthening of the anti-cruelty laws created by Proposition 2 in 2008.⁶⁸

Initiative proponents argue that Proposition 12 will reduce cruelty by preventing baby veal calves, mother pigs, and egg-laying hens from the cruelty of being crammed inside small cages for the duration of their lives.⁶⁹ The ban on sales of both California and out-of-state animals that are not raised in accordance with Proposition 12 housing standards is important, because as the ASPCA observes in their comment on the initiative: "[p]rohibiting the importation of animal products that were produced using these barbaric and unsafe methods protects farm animals as well as California consumers who don't want to support such cruel practices."⁷⁰

Proponents also argue that Proposition 12 will improve food safety.⁷¹ Citing scientific studies, proponents argue that cages are tied to Salmonella and food poisoning.⁷²

Additionally, the Proponents argue that the initiative will help grow California's economy. Proponents say that Proposition 12 will benefit small farmers and will also create more jobs because cage-free farms are more likely family owned and need more workers than the larger caged facilities.⁷³ Large companies such as McDonalds, Taco Bell, Walmart, Safeway, Burger King and Dollar Tree have committed to using cage-free products providing California cage-free egg farmers with a market.⁷⁴

C. Opponent's Arguments

Opponents of Proposition 12 include the Association of California Egg Farmers, Friends of Animals, and People for the Ethical Treatment of Animals (PETA). Opponents argue that Proposition 12 deceives voters because it would actually prolong the suffering of animals rather than relieve it.⁷⁵ The main thrusts of the opposition are discussed below.

⁶⁶ *Proposition 12—Prevention of Cruelty to Farm Animals Act (2018)*, LEGISLATIVE ANALYST'S OFFICE, <https://lao.ca.gov/ballot/2018/prop12-110618.pdf> (last visited Oct. 10, 2018).

⁶⁷ NOVEMBER 2018 VOTER GUIDE at 70.

⁶⁸ *Id.*

⁶⁹ NOVEMBER 2018 VOTER GUIDE at 70.

⁷⁰ The American Society for the Prevention of Cruelty to Animals, *California: Farm Animals Urgently Need Your Help in 2018* <https://secure.aspc.org/action/ca-ballot> (last visited Oct. 19, 2018).

⁷¹ NOVEMBER 2018 VOTER GUIDE at 70.

⁷² *Id.*

⁷³ NOVEMBER 2018 VOTER GUIDE at 70.

⁷⁴ *Id.*

⁷⁵ NOVEMBER 2018 VOTER GUIDE, at 71.

1. *Less space for chickens, more years of cages*

Current California Health & Safety Code sections 25990-25994 require egg-laying hens be able to “fully extend their limbs without touching the side of the enclosure or other egg-laying hens.”⁷⁶ Opponents argue Proposition 12 would repeal that voter-enacted law to allow egg factories to provide each hen with less space to move around.⁷⁷ Proposition 12 provides that egg-laying hens have a usable floor space as required by the 2017 edition of the United Egg Producers’ Guidelines.⁷⁸ Those guidelines require a minimum of 1 square foot of usable floor space per hen.⁷⁹ In response, PETA states, “[w]e can’t and don’t consider it remotely humane to confine birds to a miserly 1 square foot of space—and this wouldn’t even be required until years in the future.”⁸⁰ Opponents argue that Proposition 12 will not only reduce floor space for hens,⁸¹ but that it will also prolong the suffering of hens since compliance is not required until 2022.⁸²

Some animal welfare groups claim California was supposed to be “cage-free” by 2015, when Proposition 2 took effect.⁸³ Coupled with the United Egg Producers’ Guidelines, however, opponents argue Proposition 12 simply extends inhumane confinement until 2022.⁸⁴ Opponents maintain that the cages Californians voted to prohibit ten years ago are still in existence due to errors in drafting Proposition 2.⁸⁵ They say these errors include:

1. Never bothering to specify that egg-factory cages would be prohibited;
2. Neglecting to specify a minimum space required to comply with the law;
3. Refusing to heed the warnings that, if left uncorrected, Proposition 2 would fail exactly as it has (i.e. “literally millions of egg-laying hens are still locked in battery cages throughout California, even though voters were told they had outlawed those cages years ago”).⁸⁶

It is because of the alleged failure of Proposition 2 and the “false promises” of Proposition 12 that has earned Proposition 12 the name “The Rotten Egg Initiative.”⁸⁷ If Proposition 12 is passed, opponents claim that the industry would not only be allowed, but it would also be incentivized, to construct multi-level egg factories that provide hens with a mere 1

⁷⁶ Cal. Health & Safety Code § 25990, *et seq.*

⁷⁷ NOVEMBER 2018 VOTER GUIDE, AT 71.

⁷⁸ Cal. Proposition 12, § 4 (2018).

⁷⁹ Animal Husbandry Guidelines, 2017 Ed., UNITED EGG PRODUCERS, <https://uepcertified.com/wp-content/uploads/2015/08/UEP-Animal-Welfare-Guidelines-20141.pdf> (last visited Oct. 10, 2018).

⁸⁰ PETA, *Why We Oppose California’s Farmed-Animal Initiative and You Should, Too*, PEOPLE FOR THE ETHICAL TREATMENT OF ANIMALS, Nov. 21, 2017, <https://www.peta.org/blog/why-we-oppose-californias-farmed-animal-initiative-and-you-should-too/> (last visited Oct. 8, 2018).

⁸¹ Californians Against Cruelty, Cages, and Fraud, *Proposition 12 Legalizes Battery Cages in California*, STOP THE ROTTEN EGG INITIATIVE, <https://stoptherottenegginitiative.org/egg-industry-ballot-measure-battery-cages/> (last visited Oct. 10, 2018).

⁸² NOVEMBER 2018 VOTER GUIDE, at 70.

⁸³ *California Proposition 12: Bigger Cages for Farm Animals*, CALMATTERS, <https://elections.calmatters.org/2018/california-ballot-measures/proposition-12-farm-animal-cages-coops-requirement/> (last visited Oct. 1, 2018).

⁸⁴ NOVEMBER 2018 VOTER GUIDE, at 71.

⁸⁵ *Id.*

⁸⁶ Californians Against Cruelty, Cages, and Fraud, *Proposition 12 Legalizes Battery Cages in California*, STOP THE ROTTEN EGG INITIATIVE, <https://stoptherottenegginitiative.org/egg-industry-ballot-measure-battery-cages/> (last visited Oct. 10, 2018).

⁸⁷ NOVEMBER 2018 VOTER GUIDE, at 70.

square foot of floor space. Also, this measure would explicitly legalize battery cages until the year 2022 even though voters thought they had outlawed cages back in 2008. According to opponents, the bottom line is: Proposition 12 would immediately legalize battery cages throughout the state.⁸⁸

2. *Food will get more expensive*

Opponents also argue that Proposition 12 will lead to a shortage of eggs because of its restrictions on the industry, ultimately contributing to increased food prices. The National Pork Producers Council believes "Livestock production practices should be left to those who are most informed about animal care—farmers—and not animal rights activists. Additionally, changes in housing systems, which come with significant costs that increase food prices, should be driven by consumer purchasing decisions, not the agenda of any activist group."⁸⁹ The Association of California Egg Farmers argues that California farmers have already spent millions to convert hen housing systems to comply with Proposition 2, which ultimately raised egg prices by 30 percent and shrunk California egg production by 35 percent. They argue Proposition 12 will raise egg prices even higher, "making a popular, high-quality protein too expensive for many people."⁹⁰ Regulators will be required to adjust their focus from food safety to become the "meat police," and opponents believe that "you and all California consumers will have to pay for it."⁹¹

3. *Proposition 12 is Unconstitutional*

Opponents believe that Proposition 12's efforts to control the behavior of out-of-state farmers amount to unconstitutional deception.⁹² They argue that "pork farmers from across the nation will be mandated to produce a 'California only' pork, making popular products like bacon, sausage and ham much more expensive."⁹³ Opponents of the movement claim that "only California has the chutzpa to impose the preferences of its voters on the rest of the country."⁹⁴ They allege that Californians, as socially conscious as they may be, do not have the right to unduly burden interstate commerce with its unique social agenda.⁹⁵

Furthermore, opponents stress that, "even in the highly unlikely event that these constitutionally flawed provisions survive the inevitable years of legal challenges, Congress [will advance H.R. 2887, which] would render all such interstate commerce regulation null and void."

⁸⁸ Californians Against Cruelty, Cages, and Fraud, *Proposition 12 Legalizes Battery Cages in California*, STOP THE ROTTEN EGG INITIATIVE, <https://stoptherottenegginitiative.org/egg-industry-ballot-measure-battery-cages/> (last visited Oct. 10, 2018).

⁸⁹ Patrick McGreevy, *Live in California and Buy Eggs? If Voters Approve this in 2018, They'll Need to be from Cage-free Hens*, LOS ANGELES TIMES, Aug. 29, 2017, <http://www.latimes.com/politics/la-pol-ca-cage-free-eggs-ballot-initiative-20170829-story.html> (last visited Oct. 8, 2018).

⁹⁰ Debbie Murdock, *Why Prop 12 Hurt Farmers and Consumers*, THE SAN DIEGO UNION-TRIBUNE, Sep. 12, 2018, <http://www.sandiegouniontribune.com/opinion/commentary/sd-utbg-prop12-consumers-egg-prices-20180912-story.html> (last visited Oct. 8, 2018).

⁹¹ *Id.*

⁹² Californians Against Cruelty, Cages, and Fraud, *Proposition 12 Legalizes Battery Cages in California*, STOP THE ROTTEN EGG INITIATIVE, <https://stoptherottenegginitiative.org/egg-industry-ballot-measure-battery-cages/> (last visited Oct. 10, 2018).

⁹³ Blake Hurst, *California's Chicken Law and the Commerce Clause*, THE AMERICAN ENTERPRISE INSTITUTE, Jan. 16, 2014, <http://www.aei.org/publication/californias-chicken-law-and-the-commerce-clause/> (last visited Oct. 10, 2018).

⁹⁴ *Id.*

⁹⁵ *Id.*

H.R. 2887, as proposed, prohibits states from regulating those who participate in interstate commerce unless they are physically present in the state.⁹⁶ Opponents argue Proposition 12 is meaningless because, if passed, H.R. 2887 would preempt it for constitutional reasons, as stated above.

VII. CONCLUSION

Proposition 12 attempts to remedy the shortcomings created by Proposition 2 by providing specific size requirements for housing egg-laying hens, breeding pigs, and calves raised for veal. It also bans the sale of products in California from animals that are not raised in compliance with these new standards. Proposition 12 would require CDFA to promulgate rules and regulations for implementation of the initiative, although it does not specify a source of funding for implementation. Proposition 12 requires amendments be both consistent with the act's purpose and receive a four-fifths vote of the legislature, this is likely to make amending Proposition 12 difficult. Proponents contend that Proposition 12 is a necessary step towards preventing animal cruelty and reducing the risk of food poisoning. Opponents contend that Proposition 12 actually prolongs the suffering of farm animals, would raise the price of food, and is unconstitutional.

⁹⁶ Current Bill Status of H.R. 2887 (2017-2018 Session), *No Regulation Without Representation Act of 2017*, <https://www.congress.gov/bill/115th-congress/house-bill/2887/text> (last visited Oct. 10, 2018).