



PennState Law

Center for Agricultural
and Shale Law

PENNSYLVANIA DEPARTMENT OF AGRICULTURE  AGRICULTURAL BUSINESS DEVELOPMENT CENTER

Understanding Agricultural Law Webinar Series

Understanding Agricultural Law

Webinar Series

Understanding the Basics of

Farm Animal Handling & Confinement Laws

March 24, 2023





Ag Law Center Website Resources

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- Agricultural Law Weekly Review
- Agricultural Law Virtual Resource Rooms
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- Videos/Presentations
- PA Ag Mediation Program



Agricultural Law Weekly Review

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Agricultural Law Weekly Review—Week Ending November 11, 2022

Agricultural Antitrust: Federal Court Denies Tyson's Motion to Dismiss Poultry Renderers' Antitrust Suit 🌟 On November 8, 2022, the U.S. District Court for the Northern District of Georgia issued an order denying a motion to dismiss filed by River Valley Ingredients, LLC; Tyson Poultry, Inc.; and Tyson Farms, Inc.—the defendants in an antitrust case filed by three southeast poultry rendering companies. *American Proteins, Inc. v. River Valley Ingredients, LLC*, No.

Tweets from @AgShaleLaw

PSU Ag & Shale ...
@AgShaleLaw · 2h

Today at noon (ET):
"Understanding the Basics of Licensing & Regulation of Direct Agricultural Product Sales" 🍷
1 CLE credit available for PA attorneys
Learn more and register:



Pennsylvania Agricultural Mediation Program

Who can request mediation?

USDA-related issues:

- Agricultural Loans
- Wetlands determinations
- Compliance with farm programs, including conservation programs
- National organic program established under the Organic Foods Production Act of 1990
- Agricultural Credit
- Rural water loan programs
- Grazing on National Forest System land
- Pesticides

Non-USDA issues:

- Land and Equipment Lease issues.
- Family farm transition.
- Farmer-neighbor disputes.
- As approved by PA Secretary of Agriculture



Contact us:

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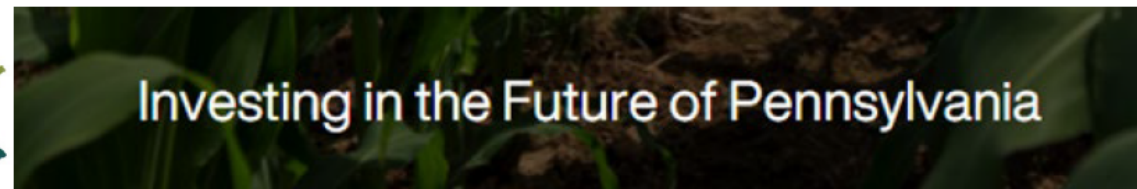
Website: www.PAAgMediation.com



Understanding Agricultural Law

**A Legal Educational Series for General Practice Attorneys and
Business Advisors Representing Agricultural and Rural Clients**

This webinar series is specifically tailored to create subject matter literacy and competence on fundamental issues of agricultural law for attorneys, advisors, and service providers to agricultural producers and agri-businesses.





Understanding Agricultural Law Series: **Past Topics:**

Understanding the Basics of

1. Agricultural Labor Laws (April 29, 2022)
2. Leasing Farmland for Energy Development (May 20, 2022)
3. Local Land Use Regulation of Agriculture (June 24, 2022)
4. Statutory Protections for Ag Operations (July 22, 2022)
5. Agricultural Cooperatives (Aug. 26, 2022)
6. Livestock Market Regulation (Sept. 23, 2022)
7. Crop Insurance (Oct. 21, 2022)
8. Federal & State Conservation Programs (Nov. 18, 2022)
9. Licensing & Regulation of Direct Agricultural Product Sales (Dec. 16, 2022)
10. Agricultural Finance (Jan. 27, 2023)
11. Pennsylvania's "Clean & Green" Tax Assessment Program (Feb. 24, 2023).



Understanding Agricultural Law Webinar Series

Upcoming Topics:

Friday, April 28, 2023, noon–1:00 ET

*Understanding the Basics of **Agricultural Conservation Easements***

- ***Registration available!***

Friday, May 19, 2023, noon–1:00 ET

*Understanding the Basics of **Landowner Immunity Statutes** (registration available soon)*

Friday, June 23, 2023, noon–1:00 ET

*Understanding the Basics of **the Farm Credit System** (registration available soon)*



Housekeeping

- This webinar is being recorded.
- Please Use the Q&A feature for questions.
- Please fill out surveys.
- CLE credits:
 - Link to CLE form will be posted in the chat
 - Please fill out form ASAP
 - Listen for code word, enter code word in form



Understanding the Basics of **Farm Animal Handling & Confinement Laws**

Presented by
Audry Thompson,
Staff Attorney

Over the past two decades, many states have enacted laws establishing and regulating confinement standards for farm animals, specifically laying hens, pigs, and veal calves.

Recently, several states have passed legislation applying those confinement standards to in-state product sales—most notably, California’s Proposition 12, currently awaiting the Supreme Court’s decision in a Commerce Clause challenge by the National Pork Producers Council.

This webinar will provide an overview and recent history of animal confinement laws, describe the current challenges facing them, and discuss other factors shaping animal confinement practices, such as retailer and consumer demand.



What are Animal Confinement Laws?

- Fall under **Animal Welfare** law
- Prohibit certain confinement practices or mandate a certain confinement requirement for specified farm animals
- Focused on
 - Egg industry
 - Pork industry
 - Veal production



"Animal Welfare"

- No standard definition
- Issues:
 - Moral/ethical
 - Sustainability
 - Public Health/Product Quality/Food Safety



"Animal Welfare"

- World Organisation for Animal Health:
 - "animal [must] be healthy, comfortable, well-nourished, safe, able to express innate behaviors, and not suffering from unpleasant states like fear, pain, and distress."
- "Five Freedoms"
 1. "hunger and thirst"
 2. "discomfort"
 3. "pain, injury, and disease"
 4. "express normal behavior"
 5. "fear and distress"
- "Naturalness"

Source: Ufer, Danielle J. State Policies for Farm Animal Welfare in Production Practices of U.S. Livestock and Poultry Industries: An Overview, December 2022, EIB-245, U.S. Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/webdocs/publications/105481/eib-245.pdf?v=9719.6>



Federal Oversight of "Animal Welfare"

- Animal Welfare Act (1966)
 - Does not apply to "farm animals . . . used or intended for use as food or fiber"
- Horse Protection Act (1970)
 - Prohibits sale/transport of "sored" horses
- **Humane Methods of Slaughter Act (1958)**
 - Applies to food animals while at plant/during slaughter process
- **Twenty-Eight Hour Law (1873)**
 - Applies during livestock transport

Source: USDA, National Agricultural Library:

Animal Welfare Act, 7 U.S.C. 2131, <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-act>

Horse Protection Act, 15 U.S.C. 1822, <https://www.nal.usda.gov/animal-health-and-welfare/horse-protection-act>

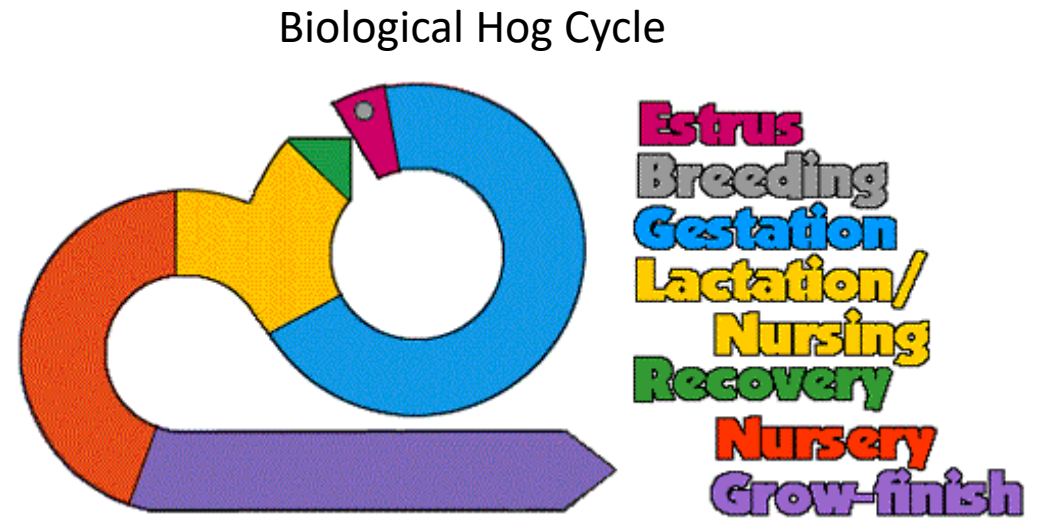
Humane Methods of Slaughter Act, 7 U.S.C. 1901, <https://www.nal.usda.gov/animal-health-and-welfare/humane-methods-slaughter-act>

Twenty-Eight Hour Law, 49 U.S.C. 80502, <https://www.nal.usda.gov/animal-health-and-welfare/twenty-eight-hour-law>



Animal Confinement Practices Generally Targeted

- Battery Cages—laying Hens
 - Generally provide 67 sq. inches/bird
- Gestation Crates—Gestating Sows
 - 6.5' x 2.5' (16.25 sq. ft.)
- Veal Crates
 - Generally about 2' x 5.5' (11–12 sq. ft.)

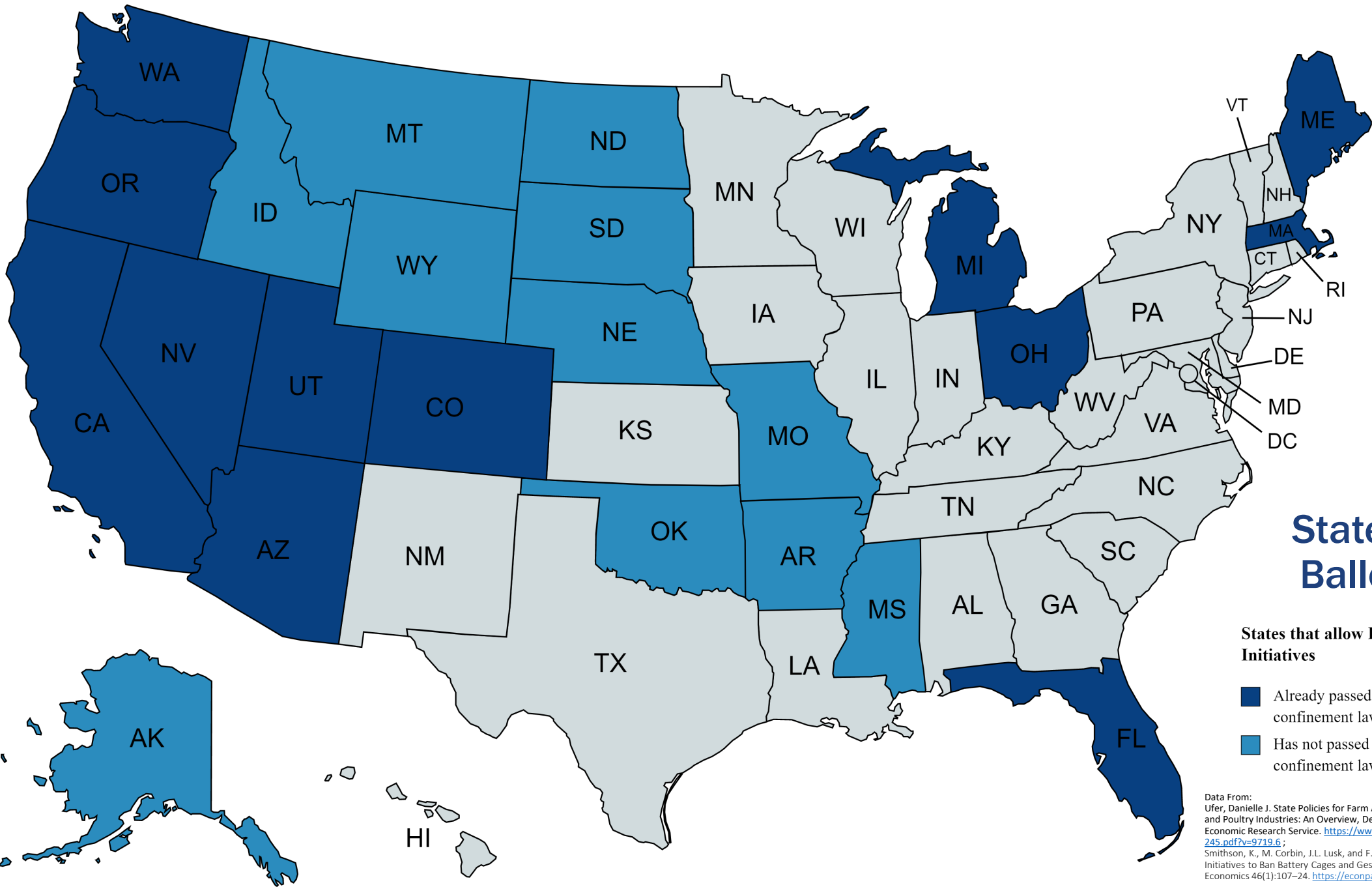


Dr. Paul Pitcher and Sandra Springer, University of Pennsylvania School of Veterinary Medicine, 1997, USDA ERS <https://www.ers.usda.gov/topics/animal-products/hogs-pork/sector-at-a-glance/>



State-level methods of creating Animal Confinement Laws

- Regulation
 - Kentucky & Ohio
- Ballot Initiatives
 - Florida, Arizona, California, & Massachusetts
- Legislation
 - 10 states



States that Allow Ballot Initiatives

States that allow Ballot Initiatives

- Already passed animal confinement laws
- Has not passed animal confinement laws

Data From:
 Ufer, Danielle J. State Policies for Farm Animal Welfare in Production Practices of U.S. Livestock and Poultry Industries: An Overview, December 2022, EIB-245, U.S. Department of Agriculture, Economic Research Service. <https://www.ers.usda.gov/webdocs/publications/105481/eib-245.pdf?v=9719.6> ;
 Smithson, K., M. Corbin, J.L. Lusk, and F.B. Norwood. 2014. "Predicting Statewide Votes on Ballot Initiatives to Ban Battery Cages and Gestation Crates," Journal of Agricultural and Applied Economics 46(1):107–24. <https://econpapers.repec.org/article/agsjoaoc/169051.htm>



Anti-Animal Confinement Laws?

North Dakota 2012 Constitutional amendment

- Approved by 2-1 margin

Text of Section 29:

The right of farmers and ranchers to engage in modern farming and ranching practices shall be forever guaranteed in this state. No law shall be enacted which abridges the right of farmers and ranchers to employ agricultural technology, modern livestock production and ranching practices.



State Animal Confinement Laws: Florida

- 2002 Ballot Measure, Filed in 2000
 - Amended Florida Constitution
- Amendment 10, Fla. Const. [Art. X, § 21](#)
 - "Limiting cruel and inhumane confinement of pigs during pregnancy"
 - Prohibit gestation crates:
 - Cannot "confine . . . or tether a pig during pregnancy . . . in such a way that she is prevented from **turning around freely**"



State Animal Confinement Laws: Other Early Adopters

- **2006: Arizona ballot initiative—Prop. 204**
 - Enacted as Ariz. Rev. Stat. Ann. [§ 13-2910.07](#)
 - Gestating sows & veal calves
 - Shall not prevent animal from "*[l]ying down and fully extending his or her limbs; or turning around freely.*"
- **2007: Oregon legislation—ORS [§ 600.150](#)**
 - Gestating sows
 - Shall not prevent animal from "*[l]ying down and fully extending its limbs; or turning around freely.*"
- **2008: Colorado legislation—Colo. Rev. Stat. Ann. [§ 35-50.5-102](#)**
 - Gestating sows & veal calves
 - Shall not prevent animal from being able to "*freely stand up, lie down, and turn around without touching the sides of their enclosure.*"



2008: California Proposition 2

- Received 63.5% support
- Applies to in-state production of **veal calves, egg-laying hens and gestating sows**:
 - Animals must be "confined only in ways that allow these animals to **lie down, stand up, fully extend their limbs and turn around freely.**"
 - "Exceptions made for transportation, rodeos, fairs, 4-H programs, lawful slaughter, research and veterinary purposes."
 - "Provides misdemeanor penalties, including a fine not to exceed \$1,000 and/or imprisonment in jail for up to 180 days."



State Animal Confinement Laws: 2009

- **Maine**

- Me. Rev. Stat. tit. 7, § 4020
- Veal calves & gestating sows
- Prohibits confining an animal "in a manner that prevents the animal from: [l]ying down, standing up and fully extending the animal's limbs; and [t]urning around freely."

- **Michigan**

- Mich. Comp. Laws. Ann. § 287.746
- Veal calves, gestating sows, & egg-laying hens
 - stand-up, turn-around requirement



2010: California AB 1437

- Applies to in-state egg sales beginning January 1, 2015
 - Prohibits sale of eggs from hens not housed according to the stand-up, turn-around requirement
- [CDFA regulation](#): 116 sq. inches/bird
- First law to prohibit in-state sales!



State Animal Confinement Laws: 2010–2018

Laws addressing confinement for in-state producers

<p>Ohio (2010) Ohio Admin. Code §901:12-5-03; §901:12-8</p>	<p>Gestating sows & Veal calves Veal calf group pens: "quality air circulation, permit opportunity for socialization . . . provide for normal resting postures, groom, eat, turn around, lie down, and rest"</p>
<p>Oregon (2011) Or. Rev. Stat. § 632.840</p>	<p>Egg-laying hens</p>
<p>Washington (2011) Wash. Rev. Code § 69.25.065; § 69.25.107</p>	<p>Egg-laying hens</p>
<p>Rhode Island (2012 & 2018) 4 R.I. Gen. Laws Ann. §4-1.1-3 R.I. Gen. Laws Ann. §§ 4-1.1-1 to 1.5</p>	<p>Gestating sows & Veal calves Egg-laying hens</p>
<p>Kentucky (2014) 302 Ky. Admin. Regs. 21:030</p>	<p>Veal calves</p>



State Animal Confinement Laws: In-State Sales Restrictions Gain Speed

2016: Mass. Question 3

- Sows, calves, & hens
- Stand-up, turn around requirement
- Prohibits in-state sales

2018: Cal. Proposition 12

- Sows, calves, & hens
- **Phased in specific minimum square footage requirements**
- Prohibits in-state sales



Proposition 12, “Farm Animal Confinement Initiative”

- November 2018—[Proposition 12](#)
 - 63% voter approval
- Phased in new **space requirements**
- Prohibited the “knowing” sale of products derived from animals not raised in the space requirements
 - \$1,000 fine and imprisonment up to 180 days
 - Cal. Health & Safety Code [Chapter 13.8](#), §§ 25990(b)(1)–(4), 25993(b)

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.

Source: California Legislative Analyst's Office, "Proposition 12," <https://lao.ca.gov/BallotAnalysis/Proposition?number=12&year=2018>

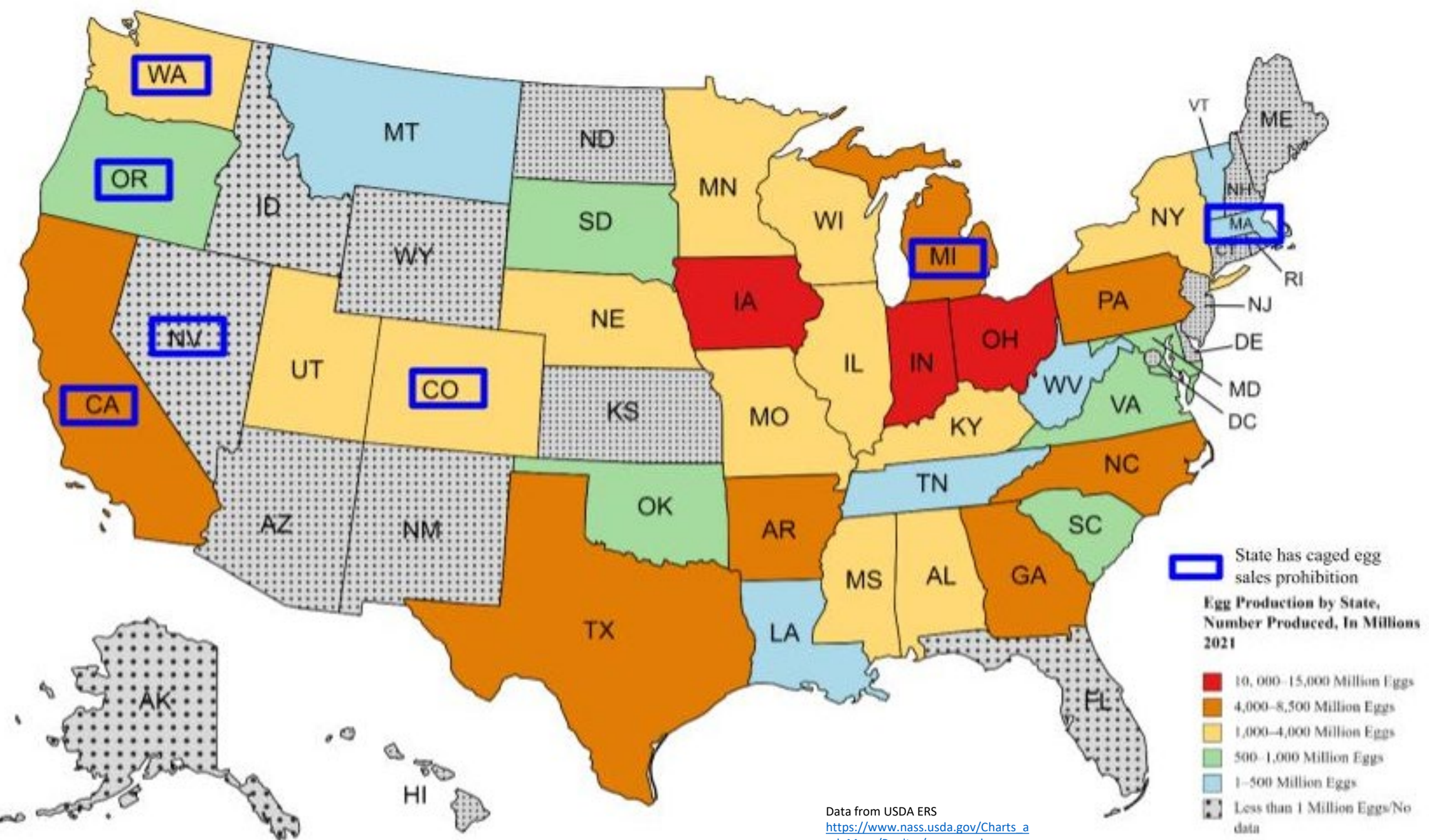


State Animal Confinement Laws: Since 2018

Laws prohibiting in-state sales of non-"cage-free" eggs

- Michigan (2019): Mich. Comp. Laws. Ann. § 287.746
- Oregon (2019): S.B. 1019
- Washington (2019): 2049 S.SL
- Colorado (2020): H.B. 1343
- Massachusetts (2021): S.2603
 - also applies "stand up, turn around" to sows/pork sales
- Nevada (2021): A.B. 399

Utah (2021): S.B. 147—requires "cage-free" housing for in-state egg production



Data from USDA ERS
https://www.nass.usda.gov/Charts_and_Maps/Poultry/eggmap.php



Challenges: Proposition 12

- 2012—Proposition 2 (2008)
 - *Cramer v. Harris*, [591 F. App'x 634](#) (9th Cir. 2015) (C.D. Cal., No. [2:12-cv-03130](#))
 - Prop 2 is not “too vague”
- 2014—AB 1437 (2010)
 - *Mo. ex rel. Koster v. Harris*, [847 F.3d 646](#) (9th Cir. 2017) (E.D. Cal, No. [2:14-cv-00341](#)), *cert. denied sub nom.*, *Mo. ex rel. Hawley v. Becerra*, 137 S. Ct. 2188 (2017) (No. [16-1015](#))
 - AB 1437 not a Commerce Clause violation
 - Denied cert.



Challenges: Proposition 12

- ***North American Meat Institute (NAMI) v. Becerra*** (filed Oct. 2019)
 - Claimed Proposition 12
 1. discriminated against out-of-state pork producers,
 2. regulated extraterritorially, and
 3. placed a substantial burden on interstate commerce
 - [420 F. Supp. 3d 1014](#) (C.D. Cal. 2019) No. [2:19-cv-08569](#)
 - **Dismissed, Upheld by 9th Circuit**
 - *N. Am. Meat Inst. v. Becerra*, [825 F. App'x 518](#) (9th Cir. 2020), *cert. denied sub. nom.*, *N. Am. Meat Inst. v. Bonta*, 141 S. Ct. 2854 (2021) (No. [20-1215](#)).
- ***National Pork Producers Council (NPPC) v. Ross*** (filed Dec. 2019)
 - [456 F. Supp. 3d 1201](#) (S.D. Cal 2020) No. [3:19-cv-02324](#)
 - [6 F.4th 1021](#) (9th Cir. 2021) No. 20-55631
 - **U.S. Supreme Court, No. [21-468](#)**



Quick Review: Dormant Commerce Clause

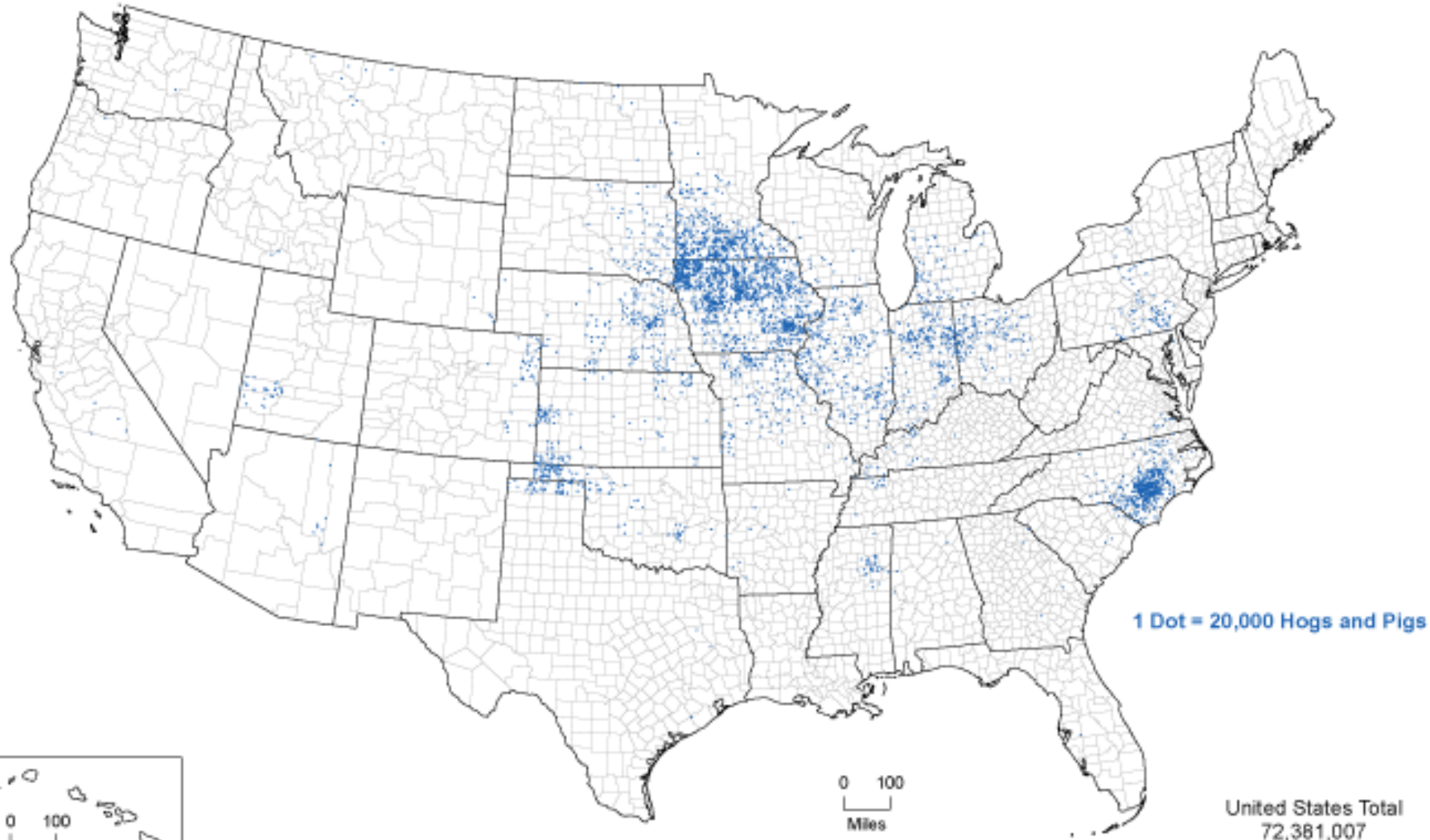
- U.S. Const., Art. I, § 8, cl. 3. grants Congress the power to “regulate Commerce . . . among the several states.”
- But—States have the power to regulate within their own borders as long as they do not discriminate.
- Two main questions:
 1. Does the law discriminate against out of state commerce?
 2. Does the law regulate extraterritorially?
 - Law invalidated if it “has the ‘practical effect’ of regulating commerce occurring wholly outside that State’s borders”



NPPC's Complaint

- Complaint
 - Prop 12 violates the extraterritoriality doctrine and burdens commerce
 - Includes stats on hogs raised in California vs. other states
 - CA reliant on out-of-state hog production:
 - CA pork consumption is 13% of national market
 - CA needs offspring of 673,000 sows to satisfy current market demand
 - Only 1,500 commercial breeding sows in CA
- California:
 - Prop 12 only applies to in-state sales
 - Not a burden on commerce

Hogs and Pigs - Inventory: 2017



United States Total
72,381,007



17-M211
U.S. Department of Agriculture, National Agricultural Statistics Service



NPPC v. Ross—Oral Argument October 2022

Final Rebuttal from NPPC counsel

- The purpose of the Commerce Clause—to prevent balkanization and unify the states—justifies a finding that the extraterritoriality doctrine should be interpreted to include Prop 12’s in-state sales restrictions as a violation the clause.
- NPPC has thus stated a claim.
- This case is only at the motion to dismiss stage and should be heard on the merits



Animal Confinement Standards Beyond the law: Market Demand

Eggs:

- 100% cage free by 2025
 - [Restaurant Brands international](#)
 - [McDonalds](#), *announced 2015*
 - [Wal-Mart](#), *announced April 5, 2016*
 - [Kroger](#), *announced July 2016*
 - [Announced](#) Kroger brand of cage-free eggs *Sept. 6, 2016*
- Currently cage-free:
 - [Whole Foods](#) (“beyond cage-free”)
 - [Starbucks](#)
 - [Panera](#) (in U.S.)



Animal Confinement Standards Beyond the Law. Industry Movers

Smithfield

- Pledge to phase out gestation crates
 - [Animal Housing](#): "We provide group housing for pregnant sows during their 16-week gestation period on our company-owned farms in the United States, Poland and Romania and at our joint ventures in Mexico."
- But see *Humane Society of the United States v. Smithfield Foods, Inc.* (D.C. Super Ct.) No. 2021 CA 003777 B
 - Oct. 18, 2021: Smithfield motion to dismiss denied.



Animal Confinement Standards Beyond the Law. Labeling & Consumer Preference



See USDA, National Agricultural Library,
Animal Welfare Audit and Certification
Programs <https://www.nal.usda.gov/animal-health-and-welfare/animal-welfare-audit-and-certification-programs>

Labeling—*NPPC v. Ross*:

- "it's really just a question of . . . putting a stamp on . . . a package . . . it's something . . . that's not substantial.
- "The labeling doesn't affect the way that the operation is run, the way that the pig is raised . . . if you have to put a label on --all you have to do is put a label on that says . . . this does not comply with Prop 12 or this was raised in 24 feet . . . it's a factual statement."

Friends or (and) Food?

**Animal Confinement Statutes:
The Animal Welfare Debate**

To be continued.





Thank You!

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