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the **LEADER**



GOING SUPREME

The NCFB Legal Foundation joins cases before the US Supreme Court

North Carolina Farm Bureau's mission is "to serve farmers and provide a unified voice for the interests and needs of the farming community." As an advocate for farmers, NCFB engages at the local, state, national, and international levels and intervenes on the behalf of farmers in legislative and regulatory matters. Chances are that if you're reading this you probably already know about that. But you may be less familiar with NCFB's Legal Foundation and the

important work it does to look out for farmers' interests. After all, our government has three branches and neglecting the Judicial Branch would jeopardize advances in other policy areas.

This month we're going to take a closer look at the North Carolina Legal Foundation's work in two cases pending before the U.S. Supreme Court.

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CALIFORNIA'S PROP 12:
AN UNLAWFUL EXERCISE
OF STATE POWER

In 2018, California voters adopted Prop 12 through a referendum. The law prohibits the sale of non-California pork products that are derived from sows housed in areas that do not conform to certain size requirements. The Humane Society of the United States ("HSUS") wrote Prop 12 and promoted it as a health and safety regulation, even though no scientific evidence supports that claim.

Pigs raised in North Carolina are bred for a national market, not a specific state. Thus, a pork chop from a pig raised on a Duplin County farm could always end up on a plate in San Francisco. As a result, North Carolina farmers will have to make substantial and costly changes to their production practices to comply with Prop 12.

The California Department of Food and Agriculture ("CDFA") is responsible for enforcing the law's requirements. Shockingly, CDFA's proposed Prop 12 rules would allow California agents to inspect North Carolina pig farms to determine compliance. Fortunately, CDFA has not issued final Prop 12 regulations and a California court has blocked the agency from enforcing the law until they are finally adopted.

American Farm Bureau Federation and National Pork Producers Council filed a lawsuit in a California federal court, arguing Prop 12 violates the federal Constitution. Put simply, the lawsuit alleges Prop 12 supporters sought to leverage California's market power to impose production practice changes on the nation's hog farmers. California consumes about 15% of the nation's pork, but produces almost nothing. Therefore, Prop 12 violates the federal Constitution because California is asserting unprecedented power over a national market. In our federal republic, that power is granted to Congress.

As expected, the federal trial court and the U.S. Court of Appeals for the Ninth Circuit upheld the law. Undeterred, AFBF and NPPC asked that the U.S. Supreme Court consider the case on appeal. The Court annually accepts less than 1% of the appeals it is asked to consider.

In support of AFBF and NPPC, North Carolina Farm Bureau, the North Carolina Pork Council, and North Carolina Chamber coordinated a coalition effort to fund and file a friend-of-the-court brief with the Supreme Court explaining why it should hear the appeal. Eleven other state Farm Bureaus, pork councils, and business associations joined the brief.

On March 28, 2022, the Supreme Court agreed to consider the appeal. Oral argument will likely be held in the fall. The North Carolina Farm Bureau-led coalition will file a merits brief in the case this summer.

THE SACKETT CASE:
DEFINING FEDERAL
REGULATORY AUTHORITY
OVER WATERS OF THE
UNITED STATES

Almost 15 years ago, Michael and Chantell Sackett began building a home near Priest Lake in Idaho. Soon after work began, the EPA halted construction, concluding the Sacketts were building in a Water of the United States, even though the Sacketts property lacked a surface connection to a nearby wetland that allegedly drained into a stream that fed into the lake.

Years of litigation ensued and the Sacketts' case is now before the Supreme Court. The question for the Justices: How far does EPA's regulatory authority under the Clean Water Act reach?

In support of the Sacketts, North Carolina Farm Bureau and nineteen other state Farm Bureaus filed another friend-of-the-court brief with the Court. The state Farm Bureaus urged the Court to rule definitively that EPA does not have unlimited regulatory power.



NCFB Public Policy Litigation Update – As of April 5, 2022

PETA v. Stein
(4th Circuit, U.S. Court of Appeals)

Animal rights groups challenge North Carolina's Property Protection Act (2015) under First Amendment to the United States Constitution.
Status:

- District Court found statute unconstitutional June 12, 2020
- NCFB, NC Attorney General, and UNC appealed July 10 and 13, 2020
- Virtual oral argument held Oct. 27, 2021

NCFB v. DEQ (Wake County Superior Court)

Administrative challenge to DEQ's use of a sue-and-settle agreement to write portions of animal waste general permits. **Status:**

- Administrative Law Judge issued a Final Decision Feb. 9, 2021, blocking three permit conditions from taking effect
- DEQ and NCEJN/NAACP filed Petitions for Judicial Review challenging the ruling
- Merits hearing held Oct. 28, 2021

FLOC v. Stein (U.S. District Court,
Middle District of North Carolina)

Farmworker union contends provisions in 2017 Farm Act relating to union activity in agriculture violate Free Speech Clause under First Amendment to the United States Constitution. **Status:**

- District Court upheld Farm Act's bar on union dues check offs, but struck down its bar on settlement agreements that require unionization of farms
- FLOC and Attorney General filed cross appeals with Fourth Circuit
- NCFB filed friend-of-the-court brief Feb. 8, 2022

REACH v. NC (Wake County Superior Court)

Three nonprofit organizations challenged North Carolina's 2017 and 2018 Right-to-Farm amendments as violations of several provisions of the North Carolina Constitution. **Status:**

- NC Court of Appeals affirmed dismissal of case on Dec. 21, 2021
- Plaintiffs filed petition for discretionary review with NC Supreme Court on Jan. 25, 2022