



**Written Testimony of the
National Pork Producers Council**

**On
H.R. 2887, “No Regulation Without
Representation” and the Growing
Problem of States Regulating Beyond
Their Borders**

**Before the
House Committee on the Judiciary
Subcommittee on Regulatory Reform,
Commercial and Antitrust Law**

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Introduction

The National Pork Producers Council (NPPC) is an association of 43 state pork producer organizations that serves as the global voice for the U.S. pork industry. NPPC represents the interests of America's 60,000 pork producers, who have operations of varying types and sizes, using various production systems.

The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. In 2016, pork producers marketed more than 118 million hogs, and those animals provided total cash receipts of nearly \$20 billion.

Overall, an estimated \$23 billion of personal income and \$39 billion of gross national product are supported by the U.S. pork industry. Exports of pork add significantly to the bottom line of each pork producer. U.S. exports of pork and pork products totaled 2.3 million metric tons – a record – valued at \$5.94 billion in 2016. That represented almost 26 percent of U.S. production, and those exports added more than \$50 to the value of each hog marketed. (The average price received for a market hog in 2016 was \$140.) Exports supported approximately 110,000 jobs in the U.S. pork and allied industries.

Iowa State University economists Daniel Otto, Lee Schulz and Mark Imerman estimate that the U.S. pork industry is directly responsible for the creation of more than 37,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 102,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry supports more than half a million mostly rural jobs in the United States.

U.S. pork producers today provide 25 billion pounds of safe, wholesome and nutritious meat protein to consumers worldwide.

Pork Production Systems

Pork production has changed dramatically in this country since the early 1980s.

Technological advances and new business models changed operation sizes, production systems, geographic distribution and marketing practices.

Pork producers have evolved from single-site, farrow-to-finish (i.e., birth-to-market) production systems that were generally family-owned and small by today's standards to multi-site, specialized farms, most of which are still family-owned. The changes were driven by the biology of the pig, the business challenges of the modern marketplace and the regulatory environment. Separate sites help control troublesome and costly diseases and enhance the effect of specialization. In many instances, sow and market hog operations are located in separate states. Pork production facilities and management practices are designed to provide animals with living conditions that protect them from injury, disease, predators and inclement weather.

The U.S. pork industry is extremely diverse in the types and sizes of operations and in how sows are housed. Sows can be housed individually, in groups or in a combination of those. Much research has been done to determine the well-being of gestating sows kept in group and individual housing, but there is no scientific consensus on the best way to house gestating sows because each type of housing system has inherent advantages and disadvantages.

Since the early 2000s, the U.S. pork industry has had to deal with challenges to its modern production systems. Specifically, it has endured attacks from animal-rights groups over the use of individual pens, or gestation stalls, for housing sows.

Few people outside of agriculture – and certainly not animal-rights activists, whose goal is to severely curtail, if not eliminate, the consumption of meat – understand the complexity of the sow housing issue or the evidence that supports the continued use of individual sow housing.

Despite that lack of knowledge, over the past 15 years, nine states have banned the use of gestation stalls for sows, either through ballot initiatives or legislation. (Some of the pork industry's largest production companies have made business decisions to use alternative housing to gestation stalls.)

Activist groups such as the Humane Society of the United States (HSUS) have been the primary champions of the bans, claiming that housing sows in gestation stalls is

inhumane. (HSUS has been attempting to get similar bans approved in several Northeastern states.)

But the science doesn't support their rhetoric. Dozens of studies show that the well-being of sows housed in gestation stalls is good. A measurement of hormone secretions in one study, for example, showed that sows in stalls do not exhibit unusually high stress levels – a claim made by animal-rights groups. In another study, sows given a choice of moving freely or remaining in a stall chose the stall. In general, gestation stall systems allow for individual feeding and better control of body condition so sows do not become too thin or too fat.

NPPC agrees with the position of the American Veterinary Medical Association (AVMA) and the American Association of Swine Veterinarians (AASV) that gestation stalls are appropriate for housing sows during pregnancy.

The AVMA position on sow housing is that it should:

- Provide every animal access to appropriate food and water.
- Promote good air quality and allow proper sanitation.
- Protect sows from environmental extremes.
- Reduce exposure to hazards that result in injuries, pain or disease.
- Facilitate the observation of individual sows to assess their welfare.
- Allow sows to express normal patterns of behavior.

Likewise, the AASV supports sow housing systems that:

- Minimize aggression and competition among sows.
- Protect sows from detrimental effects associated with environmental extremes, particularly temperature extremes.
- Reduce exposure to hazards that result in injuries.
- Provide every animal with daily access to appropriate food and water.

- Facilitate observation by caretakers of individual sow appetite, respiratory rate, urination and defecation and reproductive status.

Scientific literature indicates that individual gestation stalls meet each of the aforementioned criteria provided that the appropriate level of animal husbandry (i.e., care) is administered.

The point is: There is no scientific evidence that any one sow housing system is superior. Indeed, science and practice suggest that both individual and group housing systems have advantages and disadvantages.

Currently, the best estimate is approximately 20 percent of the U.S. sow herd is in production units where producers are putting sows in some type of pen, or group, housing system, the alternative to gestation stalls. This is being done primarily in production facilities in states that have approved ballot initiatives or legislation banning gestation stalls or on farms owned by companies that have made public announcements that they are moving away from gestation stalls.

It is important to note that in the states that have banned gestation stalls – and even in the companies that have made announcements on sow housing – producers are still using gestation stalls until sows are confirmed pregnant, meaning that nearly all sows in the United States are being housed for a portion of their reproductive years in individual housing.

The pork industry continues to fund research to better understand the impact of both stall housing and group housing on sows and, ultimately, to improve the well-being of pigs.

Certainly, there has been over the past 15 years an increase in the amount of group sow housing, but most of that has been in new barn construction. Remodeling or retrofitting barns from gestation stalls to group pens is costly, involving designing facilities, deciding on whether to install partial slats or solid floors, obtaining permits, considering reduced sow numbers given space requirements for pens and, most importantly, calculating the financial implications, including potentially higher costs of production. Many producers

have said they will go to group housing for new facilities but are unwilling to make the costly investment in retrofitting existing facilities.

The marketplace ultimately should determine what sow housing system will be used. Recent developments would indicate the market is beginning to speak. Pork producers can accept that and, as always, will respond to their customers' desires. What they have been unwilling to accept is government regulation – whether federal or state – of a production practice that has proved to be scientifically sound.

Pork producers have embraced continuous improvement and change over the years, and they will continue to do so as improved sow housing options become available.

But states that have outlawed the use gestation stalls have short-circuited that market-driven process, which allowed pork producers to respond to consumer demand rather than government fiat. Most of those states lacked significant pork production, so the economic effect on the pork industry wasn't significant.

That changed, though, with the passage in 2010 of legislation in California prohibiting the sale in the state of out-of-state pork produced from pigs born to sows housed in gestation stalls. (The ban also applies to eggs from hens housed in so-called battery cages and to veal from calves kept in veal crates.) The law was adopted as an adjunct to a voter-approved 2008 ballot initiative that banned the use of gestation stalls, as well as battery cages and veal crates. California lawmakers wanted to protect the economic interests of their state egg, pork and veal producers by making out-of-state producers comply with the housing ban – just like in-state producers – if they wanted to sell product in California.

Last year, Massachusetts voters approved Question 3, which banned gestation stalls, battery cages and veal crates – the state has very little pork or egg production and no veal production – *and* the sale in the state of pork, eggs and veal produced anywhere in the country from animals kept in the banned housing.

So pork from pigs born to sows housed in gestation stalls on farms in Iowa, for example, is prohibited from being sold in California and will be prohibited in Massachusetts, beginning Jan. 1, 2022.

Housing Ban Effects on Consumers

The California and Massachusetts bans on the sale of out-of-state eggs, pork and veal from animals raised in prohibited housing have had or will have a negative effect on consumers in those states, as well as on the producers of those products from around the country.

According to a January 2016 study conducted by Harry Kaiser, the Gellert Family Professor of Applied Economics and Management at Cornell University, California's ban on battery cages and on selling eggs from out-of-state hens housed in such cages resulted in a 49-cent per dozen increase in egg prices. (A December 2015 Midan Marketing analysis actually found that egg prices in California increased by \$1.05 per dozen from 2014 – the year before the ban took effect – to 2015, but 56 cents of that was attributable to an outbreak of avian influenza in the Midwest.) The 49-cent rise was 13½ times higher than the inflation rate for all food and 35 times higher than the overall inflation rate. Based on an average per capita egg consumption in the United States of 21½ dozen per year, California consumers are spending almost \$14 per person more on eggs or \$70 per year for a household of five because of the ban.

While that price increase may not be severe for an average California household, the same can't be said for the poorest households in the state, Kaiser pointed out.

Research by former Iowa State University economist Dennis DiPeitre found that, if applied to the entire country, such an increase in egg prices would disproportionately harm lower-income households, primarily African American and Hispanic ones. Additionally, he noted, poor people, who spend a larger share of their incomes on food, tend to live in urban areas where food prices are significantly higher than suburban and rural areas.

DiPeitre also found that since egg demand is highly price inelastic – meaning price won't affect demand much (mostly because there's no substitute for eggs) – the increase in retail egg prices could cause poorer households to reduce purchases of other essential items rather than of eggs.

This would have significant negative health consequences. Poor families already consume fewer fruits and vegetables than more financially stable households and could purchase even less of those healthy products because of a rise in egg prices.

The increased costs of protein-rich eggs and pork also will have a catastrophic impact on the effectiveness of federal support programs such as SNAP, undermining their effectiveness and the ability of recipients of those benefits to utilize them to provide a nourishing meal for their already struggling families.

Kaiser also pointed out that California's ban reduced consumers' food choices. Without the ban, consumers had the choice to buy conventionally produced food products or cage-free products at higher prices. Enactment of the cage-free law took away that choice.

The negative consequences on consumers of the California housing ban and prohibition on selling in the state eggs, pork and veal from out-of-state farms that use the banned housing no doubt will occur in Massachusetts once its ban takes effect.

Using the effects on egg prices of California's bans as a model, Kaiser estimated similar prohibitions in Massachusetts would cost the state's consumers \$249 million in higher food prices – \$95 million in higher egg prices and \$154 million in higher pork prices – in just the first year after implementation.

Diane Sullivan, an opponent of the Massachusetts initiative and an advocate for the homeless, who once was out on the streets herself, told one state newspaper that the costly bans come at a time “when our most vulnerable citizens are facing drastic cuts to the programs that support them. The least that we can do is to protect access to an affordable source of protein (eggs) for the children who are going to face significant setback as the state budget here in Massachusetts continues along the path that it appears

to be going, which is going to be cutting a significant amount of people off from public support.”

It should be noted that 1 in 6 households with children in the United States is “food insecure.”

Housing Ban Effect on Pigs and Producers

A review of research on sow productivity and welfare suggests that the type of housing system does not necessarily determine sow welfare – the reason cited by animal-rights groups in pushing for the housing bans. Gestation stalls, for example, allow for individual sow management and remove the potential for sow aggression and injury, but sows are incapable of full movement. Group pens allow for greater mobility but also allow sow aggression that can result in injury and extreme variation in body condition between aggressive and submissive sows. Research also has found no significant productivity differences between sows housed in stalls versus group pens.

A 2004 scientific literature review comparing sow housing systems indicated there is no specific health benefit to one type of sow housing over another, although Texas Tech University animal scientist John McGlone found that sows kept in stalls had lower injury scores in some body regions and maintained higher or equal reproduction performance.

The economic cost to pork producers of the California bans – on in-state use of gestation stalls and on sales of out-of-state pork from pigs born to sows raised in individual housing – is hard to determine given that they only became effective Jan. 1, 2015.

But certainly, some producers with sow operations who were forced after passage of the 2008 ballot initiative to leave California to stay in business bore not-insignificant costs to move. Other pork producers, who wanted to continue selling pork in the state, saw an increase in transaction costs – the cost to a finisher to ensure weaned pigs are from sows not housed in gestation stalls, for example – with ripple effects throughout the supply chain.

Importantly, rather than allowing competition and market forces to interact and determine production practices, bans such as California's and Massachusetts' are sending artificial signals down the supply chain, disrupting an otherwise efficient marketplace that – at least in the pork industry – historically has responded to consumer preferences.

A nationwide disruption would raise the price of food and eliminate consumer choice – at considerable cost to pork producers.

Brian Buhr, professor in applied economics at the University of Minnesota, in a May 2010 study estimated a cost to the pork industry of between almost \$1.9 billion and more than \$3.2 billion to transition to group housing.

Those conversion costs would raise the price of pork, which in turn would start a cycle of consumers demanding less pork followed by higher prices. Buhr estimates a cost to consumers of \$5 billion. Undoubtedly, some producers would go out of business, thus further reducing the production (supply) of pork and prompting another rise in consumer prices.

Of course, animal-rights groups not only know this, they count on it as a way to have “market” forces do their dirty work of significantly reducing meat consumption. (They also know that in the same-sized barn fewer sows can be housed in group pens than can be housed in gestation stalls, meaning less pork production and higher consumer prices for the smaller supply and, the groups hope, less consumption of pork.)

Commerce Clause

The prohibitions on the in-state sale of out-of-state pork from pigs born to sows housed in gestation stalls seems to be a restraint of interstate commerce and, therefore, a violation of the U.S. Constitution's Article I., Section 8, Clause 3 – the Commerce Clause.

The Constitution grants Congress plenary power over interstate commerce, with the Commerce Clause operating as a check on the legislative powers of the states to regulate the economy. Scholars have offered several interpretations of the clause, but the U.S. Supreme Court has adhered to an interpretation that posits that, by its own force, it

divests states of the power to regulate commerce in certain ways but gives the states and Congress concurrent power to regulate commerce in many other ways.

While the California and Massachusetts bans on animal housing and on the sale of eggs, pork and veal from animals raised in such housing do treat in-state and out-of-state farmers equally – one of the test of whether a state regulation or law violates the Commerce Clause is whether it discriminates between in- and out-of-state entities – the prohibitions’ potential negative effects on interstate commerce far exceed any benefit to the states.

Sponsors of the ballot initiatives only claimed a tenuous benefit to animal welfare and made no claim that banning the animal housing would benefit public health. Indeed, studies on both issues are mixed, at best, with some finding that animal and public health would be worse under a housing ban.

The U.S. Animal Health Association, for example, said hens housed in cage-free and free-range housing systems have substantially higher risk of exposure to avian influenza, Exotic Newcastle Disease, Salmonella and other diseases from wildlife because they have access to the outdoors. And several studies have found that sows housed in group pens are more susceptible to scratch and bite injuries, and lameness in some sows is more common in such housing.

Conclusion

First and foremost, pork producers, not animal-rights activists, lawmakers and regulators or even citizens, should make decisions about production practices, including sow housing, that are best for *their* animals and for producing safe food.

As mentioned in the introduction, NPPC represents pork producers of varying sizes, using production systems, including sow housing, that include several dozen permutations. (Some producers, for example, only use gestation stalls for a few days to determine whether a sow is pregnant, while others keep their sows in stalls until they’re ready to give birth.) The variety of production systems gives consumers many choices when it comes to buying pork. Some consumers are willing to pay more for pork

produced with certain characteristics, while others are more concerned about price and quality.

Producers must be allowed to use systems and production methods that work best for their operations and their animals – and that meet the demands of all consumers – and producers in one state certainly should not be told how to raise and care for their animals (or how to run their operations) by the lawmakers, regulators or citizens in another state – especially when they have little or no knowledge of the industry.

While most of these comments regarding pork industry production methods focus on sow stalls, states regulating beyond their borders in the pork industry transcends that issue. Pork producers use many different production practices – and utilize many different products – in raising their hogs. From NPPC’s perspective, sow stalls are just the tip of the iceberg. No doubt, activists will go (and have gone) after other production practices, and the pork industry faces the prospect of “death by a thousand cuts” – resulting in much higher retail pork prices – if these non-science-based actions by states are permitted to continue. Of course, this is what the anti-meat activists want.

That is the reason NPPC is supporting Rep. James Sensenbrenner’s H.R. 2887, “No Regulation Without Representation.” The legislation will help reign in states’ restraint – even if unintended – of interstate commerce and prevent a patchwork of state laws and regulations affecting the scientifically accepted production practices of pork producers.