



September 6, 2023

The Honorable Debbie Stabenow
Chair, Senate Agriculture, Nutrition and
Forestry Committee
328-A Russell Senate Office Building
Washington, DC 20510

The Honorable John Boozman
Ranking Member, Senate Agriculture,
Nutrition and Forestry Committee
328-A Russell Senate Office Building
Washington, DC 20510

The Honorable G.T. Thompson
Chair, House Agriculture Committee
1301 Longworth House Office Building
Washington, DC 20515

The Honorable David Scott
Ranking Member, House Agriculture
Committee
1010 Longworth House Office Building
Washington, DC 20515

RE: The Exposing Agricultural Trade Suppression Act

On behalf of the national organizations representing state and local officials, we write to voice our opposition to the Exposing Agricultural Trade Suppression (EATS) Act of the 118th Congress. If passed, EATS would erode state and local sovereignty by prohibiting the establishment of laws and statutes that aim to protect our nation's food production and manufacturing. It is a traditional role of state and local governments to protect and maintain the safety and general welfare of their residents.

The 10th Amendment serves as the cornerstone of constitutional federalism. Throughout history, state and local governments have exercised this authority to enact laws that shield residents from a wide array of threats, such as invasive pests and livestock diseases, while maintaining quality standards for agricultural products and ensuring food safety. As the governments closest to the people, state and local officials understand the unique needs of our individual communities. The EATS Act threatens this relationship by attempting to establish precedence that limits state and local regulatory authority in broader domains.

Furthermore, in the case of the *National Pork Producers Council (NPCC), et al. v. Ross, et al.*, No. 21-468 (2023), the U.S. Supreme Court rejected the challenger's arguments that California's "democratically adopted state law" violates the dormant Commerce Clause and impermissibly burdens interstate commerce. The Court unequivocally held that states and local governments can prohibit the sale of goods within their borders that they determine are prejudicial to their citizens. The Court further held that Prop 12, in particular, was not discriminatory because it applies similarly to in-state and out-of-state pork producers and ruled that the dormant Commerce Clause is not violated just because a state law has a practical effect on commerce even though there is no discriminatory intent.

Similarly, beginning with the seminal case of *United States v. Lopez*, No. 93-1260 (1995), the U.S. Supreme Court has emphasized that Congress's powers under the Commerce Clause have limits and should only be exercised when there is a compelling need to do so. The U.S. Supreme Court reiterated that extreme caution must be employed when exercising congressional power under the Commerce Clause, particularly when to do so would preempt nondiscriminatory state laws, like Proposition 12. In

NPCC, the Court expressly rejected the adoption of a “per se” rule against enforcement of state laws with extraterritorial effects because “virtually all state laws create ripple effects beyond their borders.” The EATS Act flies in the face of a long line of U.S. Supreme Court jurisprudence culminating with *NPCC*. This bill preempts state and local law and is not consistent with the Court’s mandate. Therefore, Congress should avoid passing any legislation that restricts the ability of state and local governments to exercise discretion over traditional functions of their levels of government.

Additionally, we have concerns regarding the inclusion of the private-right-of-action clause in the Act. Granting unrestricted private rights of action could impose excessive burdens and hardships on state and local resources, as an increase in frivolous legal action is bound to escalate costs for our respective governments.

This is not a commerce clause issue, but rather it represents an attempt to undermine the sovereignty of state and local governments who are entrusted with ensuring the strength and stability of communities. The undersigned national associations representing state and local government officials oppose this unwarranted preemption of state and local laws and urge you to oppose the EATS Act.

If you have any questions, please do not hesitate to reach out to our staff: Kristen Hildreth (NCSL) at 202.624.3597 or kristen.hildreth@ncsl.org; Owen Hart (NACo) at 503.780.0277 or ohart@naco.org; or Carolyn Berndt (NLC) at 202-626-3101 or Berndt@nlc.org.

Sincerely,



Tim Storey
CEO and Executive Director
National Conference of State Legislatures



Matthew D. Chase
Executive Director
National Association of Counties



Clarence E. Anthony
CEO and Executive Director
National League of Cities

CC:

Members of the Senate Committee on Agriculture, Nutrition and Forestry
Members of the House Committee on Agriculture