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Pigs on the Docket: How the Pork Industry's Supreme Court Case Against Prop 12 May Shape the Future of Farm Animal Welfare

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October 2022

INTRODUCTION

On October 11, the Supreme Court heard oral arguments for the pork industry’s case that California’s farm animal confinement law should be ruled unconstitutional. [National Pork Producers Council \(NPPC\) v. Ross](#) is the most significant legal challenge faced by farm animal welfare advocates, for whom the passage of Proposition 12 was a hard-fought victory.

The [Farm Animal Confinement Initiative](#) (also known as Proposition 12, or Prop 12) is one of the strongest legal protections of animal welfare in the country. It sets in place baseline space requirements for egg-laying hens, veal calves, and pregnant female pigs. Under the law, these animals cannot be kept in confinement conditions which prevent them from lying down, standing up, fully extending their limbs, or turning around freely. Pregnant sows must also be guaranteed at least 24 square feet of floor space — no more than the size of two exercise mats — compared to the 14-square-foot gestation crates which are [commonplace](#) in the industry.

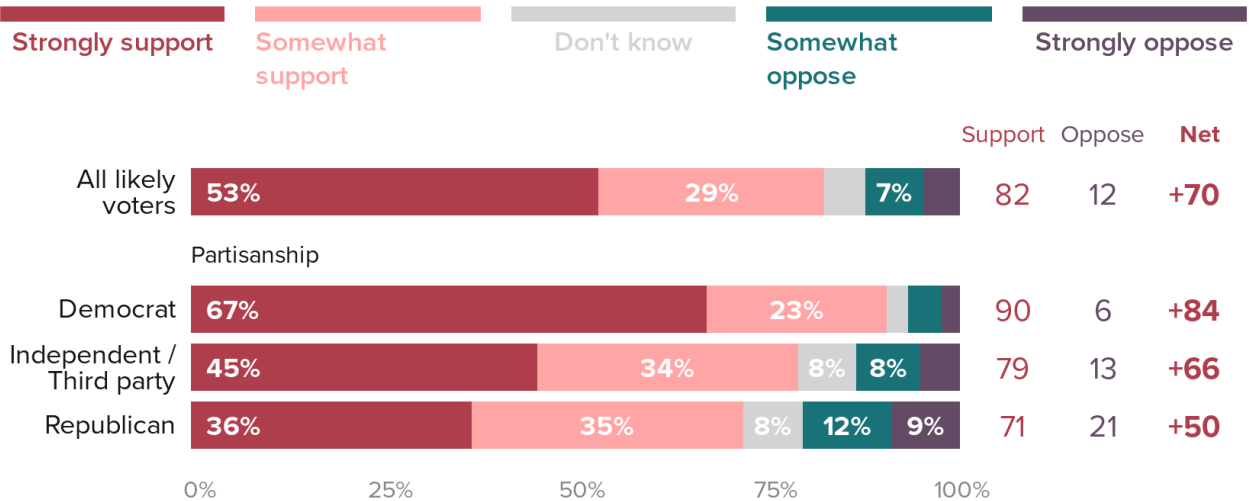
Prop 12 enjoys widespread popularity among California voters, even given political and demographic differences. A strong majority — 82 percent — of likely voters in California support Prop 12, according to recent Data for Progress [polling](#), including 90 percent of Democrats, 79 percent of Independents, and 71 percent of Republicans.

California Voters Strongly Support the Farm Animal Confinement Initiative (Proposition 12)

The Farm Animal Confinement Initiative (Proposition 12) is a California law that protects farm animals like chickens, veal calves, and pregnant pigs from experiencing cruel confinement.

To sell animal products in California, companies must meet minimum space standards, including giving these animals enough space to be able to stand up, turn around, and sit down.

Do you support or oppose the Farm Animal Confinement Initiative (Proposition 12)?



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Although Prop 12 passed as a ballot initiative in 2018, because of its phased rollout, the part of the law which applies to pregnant sows went into effect just this year. That's also the section receiving the most targeted resistance from the meat industry, which has spent the last few years campaigning against the law.

Prop 12 applies to animal products sold in California, even when they come from animals that were raised and slaughtered out-of-state, which means that it has the potential to affect the lives of nearly a million pigs and 40 million egg-laying hens a year. Its critics take issue with the law's impact on out-of-state producers selling to the California market, arguing that it violates the interstate commerce clause, a constitutional doctrine meant to limit laws which overburden trade between states. Because California produces less than 1 percent of the nation's pork yet consumes about 13 percent, the vast majority of farms impacted by Prop 12 are concentrated in top pork-producing states like Iowa, Minnesota, and North Carolina.

Neither the District Court in Southern California nor the 9th Circuit agreed with this line of argument when the National Pork Producers Council (NPPC) and the American Farm Bureau Federation (AFBF), two industry lobbying groups, brought their case before them in 2020 and 2021, respectively. However, because the Supreme Court agreed to hear the petitioners' argument this spring, animal welfare advocates are concerned that at least some of the justices on the bench might be looking to overturn the lower courts' decisions.

For the pork industry to win, it would likely first have to demonstrate that Prop 12 constitutes a substantial burden on interstate commerce. Then, if it meets that test, it would need to show that Prop 12's interstate economic burden supersedes the local interests of Californians to prevent animal cruelty and protect public health and food safety.

When California voters are informed about the ongoing Supreme Court case, including arguments for and against Prop 12, 75 percent still favor the law. Support for the law is bipartisan, with 86 percent of Democrats, 68 percent of Independents, and 62 percent of Republicans remaining in favor of the Farm Animal Confinement Initiative after hearing the arguments of its proponents and opponents.

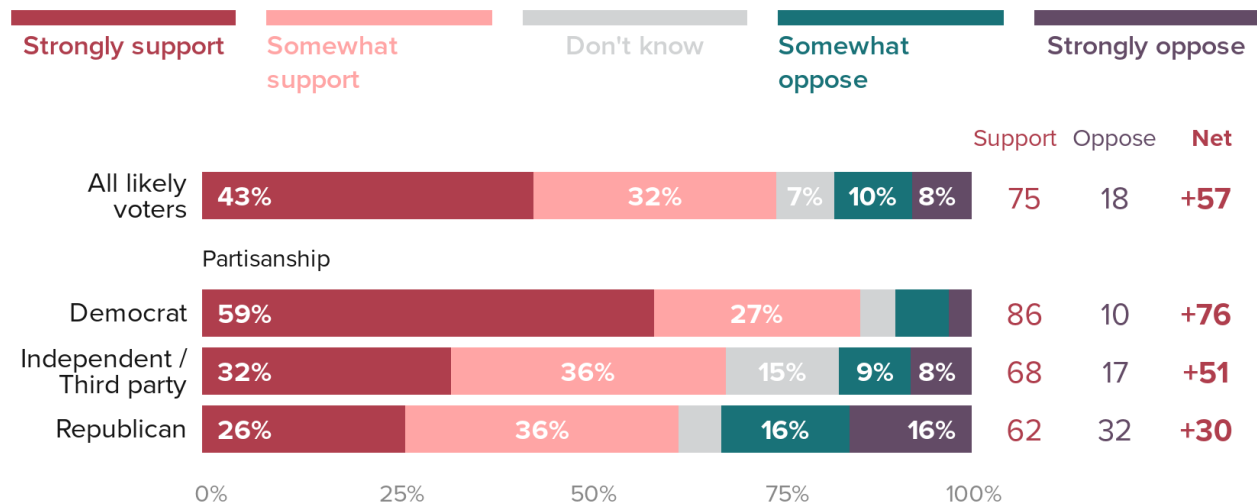
When Informed About the Supreme Court Case Against Proposition 12, Most Voters Still Support the Law

Proposition 12 is currently being challenged in the U.S. Supreme Court by pork producers.

Supporters of Proposition 12 say the law will raise the quality of life for farm animals, prevent animal cruelty, and reduce animal diseases while also ensuring better food safety.

Opponents of Proposition 12 say the law will force pork producers in other states to follow California's rules which will disrupt supply chains and raise prices on animal products for everyone.

Knowing what you know now, do you support or oppose Proposition 12?



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A Supreme Court ruling favoring the pork industry would be a disappointing walkback of animal welfare protection in the United States. The case also jeopardizes other states' efforts to enshrine animal welfare protections in law, like [Massachusetts' Question 3 \(Q3\)](#), which affords protections of similar scope to Prop 12. Massachusetts has [agreed](#) not to enforce the pork-related provisions of Q3 until the month following the Supreme Court's decision, which is expected in the first half of 2023 (the cage-free egg and veal provisions are already in place).

The purpose of this memo is threefold: to illustrate how Prop 12 affects farm animals, the meat industry, and the broader public; to contextualize the political battle around Prop 12 and other farm animal welfare reforms; and to provide recommendations to policymakers and advocates of animal welfare to improve animal welfare in U.S. food systems even if the Supreme Court were to rule against Prop 12. These recommendations include establishing federal legal recognition of farm animal welfare, supporting regulatory reforms to increase corporate accountability in the meat industry, and bolstering policy incentives that support the shift toward cruelty-free products and meat and dairy alternatives.

WHAT DOES PROP 12 MEAN FOR FARM ANIMALS AND THE MEAT INDUSTRY?

Pigs are highly social, intelligent animals known to form lasting family and group bonds in the wild. Harsh conditions in industrialized farm facilities not only cause extreme pain and isolation, but also prevent them from fulfilling their complex behavioral needs. The cruelties suffered by farm animals in confinement are increasingly being recognized by legislators and voters alike. Recent Data for Progress polling shows that animal welfare protection is extremely popular among voters across the country; a resounding 80 percent of likely voters agree that preventing animal cruelty is a matter of personal moral concern.

About 6 million female sows are used each year for breeding in the U.S. Most spend their entire lives packed into warehouses in intense, physically debilitating confinement. Before their bodies give out, they live in one of two places: gestation crates, where they remain through their pregnancy, and farrowing crates, where they give birth and suckle their piglets. Since farrowing crates, though also extremely constrictive, prevent sows from accidentally crushing their young, Prop 12 and most other animal welfare laws have targeted the use of gestation crates as a particularly cruel form of farm animal abuse.

Ethical concerns aside, promoting animal welfare is also an urgent matter of food safety and public health, particularly in regard to disease resilience. A 2020 UN report identifies intensive factory farming as one of the highest risk factors for future pandemics. A growing body of research shows how intensive farming practices magnify the impact of disease transmission because animals grown in those environments lack genetic diversity and have weaker immune systems. At the same time, an astounding 80 percent of all antibiotics sold in the United States are used in animal agriculture for marginal growth gains and short-term infection prevention. Overuse of antibiotics on factory farms amplifies the threat of antibiotic-resistant bacteria being transmitted from animals to humans.

Business groups say, however, that the costs incurred by out-of-state producers to align their farming operations with Prop 12 standards will be devastating to the industry, predicting food shortages and price spikes in bacon and other pork products. However, many of the industry's largest pork producers have already reassured clients and stakeholders that their businesses will not be significantly impacted by Prop 12. Donnie King, the president of the giant meat processing company Tyson Foods, told investors last year, "As we look at Prop 12, it's about 4 percent of total production. That's not significant for us today. We can do multiple programs simultaneously, including Prop 12." Smithfield Foods, the nation's leading pork producer, announced in its 2021 Sustainability Impact Report that it is prepared to comply with Prop 12. Other top brands, including Clemens and Hormel, have also publicly confirmed their plans to produce pork in compliance with Prop 12 statutory requirements.

The industry trade groups pushing for Prop 12 to be overturned say that the law will transform the national pork industry by driving smaller farms out of business, contributing to greater industry consolidation. Today, the top four hog-processing companies control two-thirds of the entire U.S. pork market, meaning that they leverage significant control over market prices and largely determine market opportunities for small to midsize hog farms. These processors, the megacompanies that the Biden Administration has called out for price gouging during the coronavirus pandemic, squeeze profit margins for farmers while making meat more expensive for consumers.

This means that, contrary to the industry’s argument, smaller, nonindustrial farms — which are more likely to raise sows in more humane conditions to begin with — actually stand to benefit from Prop 12. Its total ban on nonconforming pork gives small farmers the opportunity to make investments for animal welfare while staying insulated from the possibility that a different, cheaper model could undercut them. From a legislative vantage point, then, farm animal welfare is not just about reforming morally egregious practices but also about pushing back against the trends of hyperindustrialization in the agricultural sector.

LEGISLATIVE PROGRESS AND PUSHBACK

Although farm animal welfare has seen growing legislative interest in the past decade, protections in state and federal law are still fairly limited, and very little consensus exists around how courts should weigh animal interests against other legal considerations. Protections for farm animal welfare are notably lackluster in federal law: The Animal Welfare Act of 1966, the primary federal protection for animal welfare, expressly excludes animals raised for food or fiber. Neither the Humane Methods of Slaughter Act (which requires that animals be stunned before slaughter to minimize pain) nor the Twenty-Eight Hour Law (which caps the number of hours animals can be in transport without rest) includes poultry under its protections.

The farm animal welfare laws that do exist on a local and state level, including in California, tend to be focused on reducing intensive confinement practices. In 2008, following years of advocacy from the Humane Society and animal welfare supporters, California voters passed Prop 2, a ballot initiative which requires in-state producers to ensure veal calves, egg-laying hens, and pregnant sows have enough room to lie down, stand up, fully extend their limbs, and turn around freely. Two years later, California passed a companion law called AB 1437, which required all eggs sold in the state (irrespective of where they were produced) to meet Prop 2 standards. Besides expanding the AB 1437 sales ban to pork and veal, Prop 12 builds on prior state legislation by specifying confinement minimum requirements (including cage-free conditions for laying hens) and extending the same regulatory standards to liquid eggs, which are often used in eateries and cafeterias.

Because the Prop 12 lawsuit has been motivated by the application of the interstate commerce clause, the stakes of the case extend beyond animal welfare. A decision in favor of the NPPC might imperil a raft of regulations pertaining to in-state sales, including state utilities laws which impose renewable energy standards and also have inevitable upstream effects on out-of-state suppliers. Critics say that Prop 12 effectively allows the preferences of states with greater market share to supersede the interests of smaller states.

Along with agricultural trade associations and free enterprise groups, 20 states and the solicitor general under the Biden Administration have filed amicus briefs in support of the producers, while 14 states and the District of Columbia have filed a brief in support of California. Senators Dianne Feinstein (D-California), Alex Padilla (D-California) and Cory Booker (D-New Jersey) are particularly outspoken advocates of Prop 12 and have formed a coalition with 13 other senators to publicly call for the solicitor general’s support of the law.

It isn't a sure bet how the conservative court will rule. Though the court's acceptance of the case is not a promising sign for California, political analysts [say](#) that the ruling could produce some unexpected bedfellows. Animal advocates, for example, can expect a receptive audience with Justices Neil Gorsuch and Clarence Thomas, both of whom have been openly critical of expanded use of the dormant commerce clause, which is not explicitly written into the Constitution.

While much attention is rightly being channeled toward the Supreme Court case, the political tug-of-war surrounding animal welfare reform has been occurring alongside the litigation process. Before the Supreme Court agreed to hear the industry's challenge to Prop 12, Senate Republicans had begun a battle against Prop 12. In August 2021, Sen. Roger Marshall (R-Kansas) introduced the [Exposing Agricultural Trade Suppression \(EATS\) Act](#), now dormant in the Senate's Agriculture Committee, to counter the California law by keeping states and local governments from regulating agricultural products sold by out-of-state vendors.

Also in 2021, Booker, a longtime political ally of animal welfare groups and independent family farmers, [reintroduced](#) the Farm System Reform Act with cosponsors Sen. Bernie Sanders (I-Vermont), Sen. Elizabeth Warren (D-Massachusetts), Sen. Kirsten Gillibrand (D-New York), and Sen. Ed Markey (D-Massachusetts) after prior attempts were stalled before the Agriculture Committee. If passed, the law would place a moratorium on new and expanding industrial farming facilities with the aim of phasing the largest ones out by 2040, introduce new market protections for family farmers and ranchers, and hold processing companies responsible for the pollution they create. Representative Ro Khanna (D-California) introduced a [companion bill](#) that is stalled in the House Subcommittee on Livestock and Foreign Agriculture.

If the Supreme Court were to rule that Prop 12 is unconstitutional on the basis of the dormant commerce clause, policymakers can still leverage many strategies to make inroads on animal welfare without defaulting to interstate commercial regulation. By establishing federal legal recognition of farm animal welfare, supporting regulatory reforms to increase corporate accountability in the meat industry, and bolstering policy incentives that support the shift toward cruelty-free products and meat and dairy alternatives, we can take steps toward building a food system devoid of unnecessary animal suffering.

POLICY RECOMMENDATIONS

Regardless of the outcome of the Supreme Court case, the level of industry resistance to Prop 12 has made evident the pressing need for clear government action, both at the political and market level, to improve animal welfare in U.S. food systems. This includes more robust legal protections for farm animal welfare on a federal level alongside reforms to promote competition and transparency in the meat industry and to incentivize the production and consumption of alternative proteins.

ESTABLISH FEDERAL LEGAL RECOGNITION OF FARM ANIMAL WELFARE

Current federal legal standards for animal welfare largely fail to include farm animals under their protections, but farm animals deserve lives free from extreme exploitation and suffering, just like pets and animals used for research. While local and state laws can provide essential protections for farm animals, their coverage is limited and highly variable from jurisdiction to jurisdiction. Policymakers can propose an amendment to the Animal Welfare Act of 1966 so that farm animals are not excluded from

its protections against inhumane confinement, slaughter, and other commonplace abuses. For relevant framing language, policymakers may look toward the European Union’s 2009 Treaty of Lisbon, which includes direct recognition of the sentience of animals and a directive for EU member states to “pay full regard to the welfare requirements of animals,” including animals raised for food.

SUPPORT REGULATORY REFORMS TO INCREASE CORPORATE ACCOUNTABILITY IN THE MEAT INDUSTRY

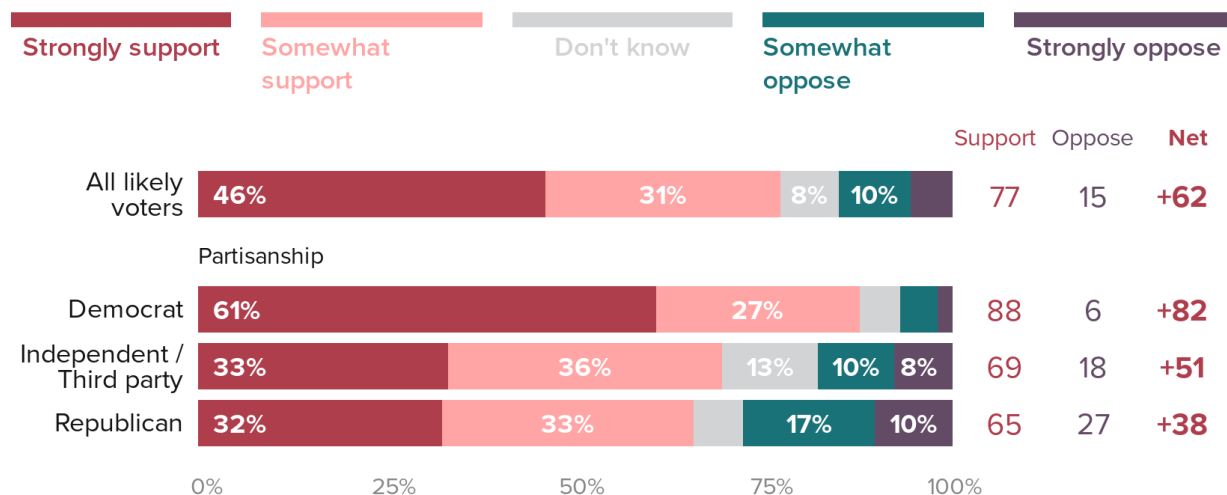
Seventy-seven percent of California voters polled by Data for Progress express a strong desire for greater corporate transparency on animal welfare standards. Among these respondents, 88 percent of Democrats, 69 percent of Independents, and 65 percent of Republicans support creating national transparency requirements for animal welfare. Most of the terms that currently appear on meat and dairy packaging, like “ethically raised,” aren’t actually defined legally by the United States Department of Agriculture (USDA) or the Food and Drug Administration (FDA), and the two agencies have separate standards to certify labeling, including relying on third-party auditors whose inspections can be lackluster and uneven. Advocating for more standardized enforcement of humane labeling in both agencies will help consumers make more informed purchasing decisions and recognize the efforts of farmers who have adapted their operations to meet higher welfare standards.

California Voters Across Party Lines Support Creating National Requirements for Animal Welfare Transparency

Many companies have promised better treatment of the chickens and pigs they source eggs and pork from, including eliminating the confinement of these animals in small cages.

However, some companies do not have systems in place to allow consumers to check that these companies are following their promises instead of breaking them.

Do you support or oppose creating national requirements for animal welfare transparency to ensure companies are complying with animal cruelty standards?



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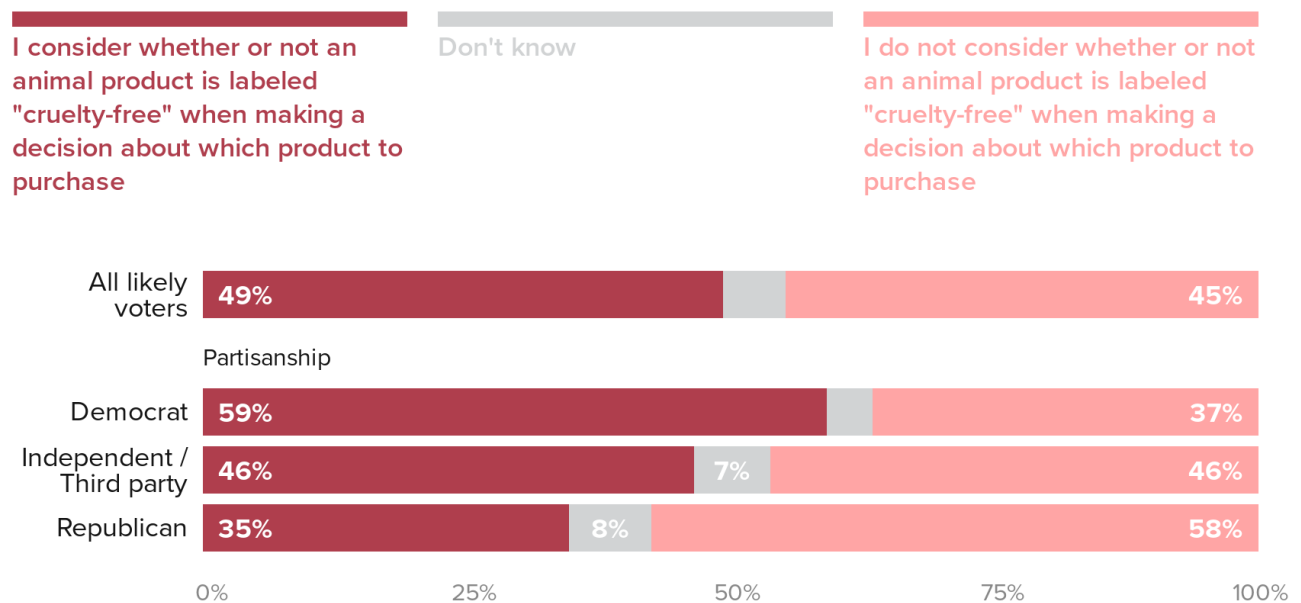
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BOLSTER POLICY INCENTIVES THAT SUPPORT THE SHIFT TOWARD CRUELTY-FREE PRODUCTS AND MEAT AND DAIRY ALTERNATIVES

As alternative meat products like plant-based proteins and cultivated meat continue to gain traction in U.S. markets and reach price parity with conventional meat products, the pork industry will face novel challenges in cost-competitiveness. Although for many people other factors like pricing, availability, and quality govern purchasing decisions, 49 percent of California voters consider whether a product has “cruelty-free” labeling when going grocery shopping for eggs and meat products, a telling indication that concerns for animal welfare are increasingly influencing consumer choices.

Nearly Half of California Voters Consider Whether Animal Products Are "Cruelty-Free" When Making Purchasing Decisions

When grocery shopping for animal products such as eggs and meat, do you consider whether the product is "cruelty-free" when deciding what to purchase, or is that something you don't take into account?



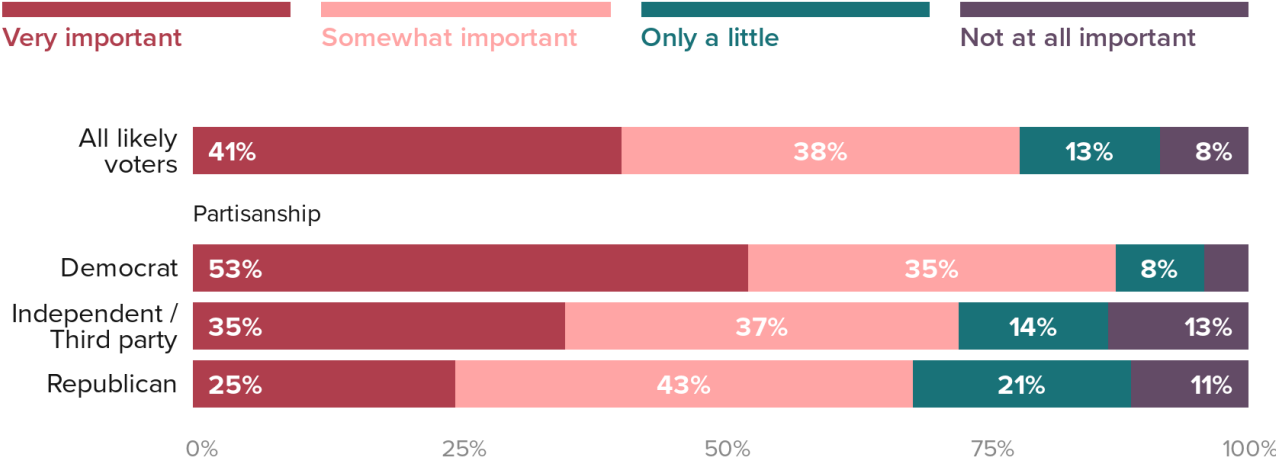
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Nearly four out of five (79 percent) of consumers view it as “somewhat important” or “very important” for companies to include cruelty-free animal products in their product offerings. Younger consumers value cruelty-free products more than older ones — a sign of how consumer attitudes are changing — and a similar trend can be observed among genders, where 16 percent more female respondents (who are often responsible for making household purchasing decisions) value cruelty-free products than men.

More Than Three-Quarters of California Voters View Offering "Cruelty-Free" Animal Products as Important

How important or not important do you think it is for food companies to offer consumers cruelty-free animal products, such as pork, chicken, and beef?



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The Biden Administration recently published an executive order on advancing biotechnological innovation to cultivate alternative food sources — the first executive action of its kind. Executive and regulatory actions like shifting subsidies and tax incentives toward humanely raised meat and dairy products as well as the growing alternative protein industry can help make those options more widely accessible as consumer preferences evolve. Increasing federal funding for research and development for sustainable meat alternatives and making plant-based options more widely available in publicly funded institutions and federal meal programs will also encourage more individuals to consume less factory-farmed meat. Publicly funded research can be used by scientists and companies across the alternative proteins sector, which is well-positioned for dramatic growth: by 2030, if the pace of current research innovations and market demand continues, the industry could generate nearly 200,000 jobs in the U.S.

CONCLUSION

The pork industry's current model of intensive factory farming and hyperconsolidation among a select few producers has produced a food system which is vulnerable to shocks like the pandemic and relies on the lowest standards of animal welfare to turn over shareholder profits. These practices are not only harmful for farm animals but also for consumers, family farmers, and the environment. State protections like Proposition 12 should be applauded for reducing some of the industry's most inhumane confinement practices, though they are alone insufficient to address an industry dominated heavily by megacorporations that operate across state lines.

Supporting the humane treatment of animals raised for consumption is the very least politicians and advocates can do to reduce some of the most extreme forms of suffering and abuse experienced by sentient creatures. While enforcement of Prop 12 is effectively frozen until the Supreme Court announces its ruling in 2023, policymakers and advocates should continue to take significant steps toward integrating animal welfare protections into local, state, and federal law.

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