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A UNIFORM APPROACH TO FARM ANIMAL WELFARE LAWS:  
THOUGHT FOR OUR FOOD INSTEAD OF FOOD FOR OUR  
THOUGHT  
*Channing Burd*



# **A Uniform Approach to Farm Animal Welfare Laws: Thought for Our Food Instead of Food for Our Thought**

Channing Burd

## **I. Introduction**

We have all seen the commercials and know “Happy Cows Come from California,”<sup>1</sup> but there is a larger issue hidden inside the phrase. Why should not all farm animals be happy, regardless of which state they were raised in? Why are only the cows in California happy, but not the chickens and the hogs as well? Farm animal welfare in the United States needs regulatory overhaul, and we needed it decades ago. This is not to say there are no regulations surrounding the welfare of farm animals, because they do exist. Upon examining them in the latter parts of this article, we will understand how ineffective those regulations are. This article will illustrate why regulatory overhaul is needed. First, we will examine how a new system of laws, which are part of a uniform code enacted by every state, is the best solution to the problem surrounding farm animal welfare.<sup>2</sup> Second, we will examine the increased consumer interest in farm animal welfare.<sup>3</sup> Third, we will examine how consumers in some states have gone so far as to create laws through the voting process to address the needs they see.<sup>4</sup> Fourth, we will examine how those laws do not help with the issue but instead make matters worse.<sup>5</sup> Fifth, we will see how states have a variety of approaches to handling animal welfare, which creates a very fractionated approach across the country.<sup>6</sup> Lastly, we will examine the federal legislation which has been ineffective and is outdated, lacking any true ability to address the issue.<sup>7</sup>

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<sup>1</sup> For a brief synopsis of commercials using this slogan *see*, *People for the Ethical Treatment of Animals, Inc. v. Cal. Milk Producers Advisory Bd.*, 125 Cal. App. 4th 871 (Cal. Ct. App. 2005).

<sup>2</sup> *See infra* Part II.

<sup>3</sup> *See infra* Part III.

<sup>4</sup> *See infra* Part III(a).

<sup>5</sup> *See infra* Part III(a)(i).

<sup>6</sup> *See infra* Part IV.

<sup>7</sup> *See infra* Part V.

When looking at the entirety of this article, we need to keep in mind that animals are not homogenous, but our current legislation is a one-size-fits-all approach. Trying to apply the same laws to cows as we do poultry, or vice versa, is simply ineffective and illogical. One of the biggest differences between the cattle industry, beef or dairy, compared to poultry and pork is: the supply chain. Both the pork and poultry industries are vertically integrated, meaning they have a streamlined approach in which the person, or entity, at the end of the supply chain is the same at the beginning of the supply chain. On the other hand, beef is not a vertically integrated system. Cows typically begin on a family owned cow-calf operation, where they are weaned from the mother, and then sold once they reach a certain weight.<sup>8</sup> Next, they will either be moved to a backgrounding operation where they will be fed until they reach the ideal weight; or they will remain on the original operation until the ideal weight is achieved. Upon reaching the ideal weight, the cattle are then sold, or transported, to a feedlot. At the feedlot, or Confined Animal Feeding Operation (often referred to as a “CAFO”) they will go through the finishing process. The finishing process involves cattle being fed a specific diet, until they reach slaughter weight.

With varying approaches, or systems, for different farm animals in this country we cannot treat them all the same. It is like trying to fit a round peg into a square hole. If a uniform welfare code were to be created, and enacted, there could be different sections of the code applicable to different animals. The ability to treat each species as their own instead of having an umbrella approach as we currently do, would be advantageous to all species of farm animals and their welfare.

Like commercial transactions in the early 1900’s, every state currently has varying laws creating a system in which a farmer in Missouri does not have to follow the same regulations, at the state level, as a farmer in Arkansas even if they are selling their animals to the same corporation. The comparison to commercial transactions is intentional, because to address the issue a century ago, the Uniform Commercial Code was drafted and enacted.

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<sup>8</sup> *The Beef Lifecycle*, PA BEEF COUNCIL, <https://www.pabeef.org/raising-beef/beef-lifecycle>.

Once again, this article is not meant to critique current practices by producers who are raising farm animals in the United States, but rather to improve the ability to enforce laws governing farm animal welfare.

## II. Analysis: Why Uniformity Is Necessary

So, why should we create a uniform act to have each state adopt regarding farm animal welfare? We need to clean up the regulatory body of work in this area of law. When there is no consistency in the definition of animal cruelty amongst the states, companies cannot give their employees comprehensive training before they begin employment. Currently, companies would have to teach workers in each state, individually, about the state specific laws. If we enacted a uniform set of laws, the companies would be able to provide comprehensive training to every employee allowing them all to be trained in the same manner. Not only would a uniform act allow for comprehensive training, but it could be drafted in a way which holds managers and C-suite executives accountable for the actions of their companies, unlike the current system.<sup>9</sup>

Along the same lines, producers in each state are currently held to different standards of welfare practices. This allows producers in some states to produce at a higher rate than others, which is no fault of the farmer. They are still practicing humane methods and complying with their state laws. When a producer in Missouri can raise egg-laying hens in smaller cages than their competition in California, we are giving one group of producers an advantage in the marketplace. None of this is to say that farmers are using inhumane practices. But when a farmer is running a business, they are going to want to make the most money they possibly can (any good businessperson would do the same thing).

With a lack of common definitions for animal cruelty, a lack of civil penalties, a lack of prosecutions regarding

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<sup>9</sup> See Fair Oaks Farm case where only the employees who were mistreating the animals were charged for an example. *See eg.*, Dave Bangert, *Felony Charge Dropped for only ex-Fair Oaks Farms Worker Arrested in Animal Abuse Case*, LAFAYETTE JOURNAL & COURIER, (Dec. 18, 2019), <https://www.jconline.com/story/news/2019/12/18/fair-oaks-farms-animal-abuse-felony-charge-dropped-former-employee/2695688001/>.

violations of law, and a lack of uniformity regarding the way certain animals should be raised, we have created a very fractionated approach. When a businessperson in the early 1900's contracted with a businessperson from a different state, no one really knew which state laws would apply<sup>10</sup>, very similar to the state of agricultural laws in the United States now. The Uniform Commercial Code is now taught to every first-year law student in the country, so why can the same not be done with agriculture?

Another thing to consider is not every state has the same sectors of agriculture, and every state has different animals being raised inside the state. We cannot treat cows the same as chickens, nor pigs the same as we treat cows. Animals are not homogenous and cannot all be placed under the umbrella of a few pieces of legislation. A uniform set of laws could be drafted in a manner which allows for different chapters of the law to address the different animals we produce across the country. A uniform act could also allow for state agencies to be the enforcement arm of the law, alleviating the pressure on federal agencies to enforce numerous laws across the entire country. This would limit the number of producers each agency oversees and allow for agencies to have the ability to ensure producers are being held accountable more consistently than they currently are under federal enforcement.

Lastly, a uniform act would allow for a baseline approach to be implemented across the country. A baseline which would allow for expansion, the initial piece could address farm animal welfare laws. But the next step could be addressing the greenwashing or label fatigue we will examine later in this article.<sup>11</sup> While labeling is handled at the federal level, a uniform act would allow for expansion to address the loopholes in labeling requirements and third-party certifications we see companies taking advantage of to increase their profitability. The expansion could then trend in the direction the American public sees fit. One example of this would be creating educational materials or opportunities for consumers to understand what happens on a farm and hopefully

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<sup>10</sup> Application of the UCC, U.C.C.

<https://uniformcommercialcode.uslegal.com/application-of-the-ucc/> (last visited Oct. 29, 2022).

<sup>11</sup> See *infra* Part III.

bridge the gap between consumer and producer. Or even go one step further to allow for meat produced at state-inspected slaughterhouse to be sold interstate.

While a piece-by-piece approach could cause issues such as certain amendments being challenged, the ability to create a set of laws which allows for the uniform act to stay modern and change if there are hiccups in the process. The possibility of issues occurring down the road cannot be enough to deter us from creating a system of laws which can enact sweeping change in an area which desperately needs it. This process cannot be done with the states handpicking certain sections of the uniform code to enact. It must be done in entirety, so we do not end up back in the same situation of state laws having no uniformity.

Now that we have discussed the benefits of a uniform code in farm animal welfare, the rest of this article will provide background information on the current state of regulation and consumer interests in the United States.

### III. Consumer Interest in Animal Welfare

The American consumer is becoming more aware of the way animals are being treated and how the food they are consuming was treated during its lifetime. Not only is the average consumer becoming more aware, but they are also making decisions in the grocery store aisle based on how the animal(s) were treated.<sup>12</sup> Whether the decision is a decision to buy meat because they believe they were treated humanely,<sup>13</sup> or not purchasing from certain companies due to learning about a poor reputation the company has regarding their treatment of animals.<sup>14</sup> Regardless of the decision, consumers are placing significantly more weight on the welfare of the animals they are purchasing. Further, consumers have shown a strong

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<sup>12</sup> *Consumer Perceptions of Farm Animal Welfare*, ANIMAL WELFARE INST., <https://awionline.org/sites/default/files/uploads/documents/ConsumerPerceptionsFarmWelfare.pdf> (last visited Oct. 31, 2022).

<sup>13</sup> *Id.* at 1 (citing to T Johnson, *Alternative Proteins, Animal Welfare Concerns Shift Beef, Pork Preferences*, MEATINGPLACE, Feb. 12, 2019).

<sup>14</sup> *Id.* (citing to Jamie Ballard, *Women More Likely Than Men to Care About Ethical Meat*, YOU.GOV. (Nov. 26, 2018), <https://today.yougov.com/topics/consumer/articles-reports/2018/11/26/ethical-meat-price-quality-animal-rights>).



support for regulations which address farm animal welfare.<sup>15</sup> To support this survey finding, we must look no further than the likelihood of a product being purchased based on the labeling claiming the animals were raised in a welfare-friendly manner.<sup>16</sup>

A majority of consumers pay significant attention to the labels, resulting in sales increasing for items making claims the animal was raised in a humane manner.<sup>17</sup> These labels can become misleading, whether intentionally or unintentionally, to consumers.<sup>18</sup> With labels occasionally being misleading, the ability to have uniform regulations in place requiring all animals to be raised in such a manner would eliminate some of the confusion we see in the grocery aisle. One study even suggests there is “label fatigue,” causing consumers to be overwhelmed with the claims on the packaging of food they are seeing in the store.<sup>19</sup> A uniform code, in the beginning may not be comprehensive enough to change labeling certifications but having more regulations surrounding the welfare of these animals would make the label claims superfluous. When animals are being raised in a manner consistent with a uniform code promoting animal welfare, we no longer need all the label claims to illustrate which animals have been raised in accordance with the certification(s) guidelines.

With so many corporations knowing they have the ability to market their products in a certain way, making their products more likely to be purchased, we are experiencing a phenomenon of “greenwashing.”<sup>20</sup> Greenwashing happens when a company appears to be acting in a manner that is

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<sup>15</sup> *Id.* at 4 (citing *More Consumers Concerned About Animal Welfare*, FEEDSTUFFS, (Jun. 2, 2017), <http://www.feedstuffs.com/news/survey-more-consumers-concerned-about-animal-welfare>).

<sup>16</sup> *Id.* at 9 (citing D.S. Conner et al., *Consumer Preferences for Pasture-Raised Animal Products: Results from Michigan*, 39 J. OF FOOD DISTRIBUTION RESEARCH, Vol. 12 (2008)).

<sup>17</sup> Alicia Kelso, *Consumers are willing to pay a premium for animal welfare certifications*, GROCERYDIVE, (Jul. 17, 2018) <https://www.grocerydive.com/news/grocery--consumers-are-willing-to-pay-a-premium-for-animal-welfare-certifications/533852/>.

<sup>18</sup> ANIMAL WELFARE INST., *supra* note 12, at 11 (citing *Millennials Drive Rise in Fresh-Meat Buying: Study*, MEATINGPLACE, (May 21, 2018), <http://www.micausa.org/millennials-drive-rise-fresh-meat-buying-study/>).

<sup>19</sup> *Id.*

<sup>20</sup> Carlyann Edwards, *What is Greenwashing?*, BUS. NEWS DAILY (Aug. 05, 2022), <https://www.businessnewsdaily.com/10946-greenwashing.html>.

environmentally conscious but is not actually acting in accordance with their portrayal.<sup>21</sup> Greenwashing is more of a reference to companies portraying themselves as being environmentally friendly, the comparison to label fatigue might be a bit of a stretch. The two things run hand in hand though, because label claims and greenwashing are both examples of how companies use marketing to boost their products (and their bottom line) while not actually acting in accordance with the claims they are making.

### A. *Ballot Initiatives*

The next example of consumers showing their concerns about the treatment of farm animals comes in the form of a ballot initiative. A ballot initiative is sometimes referred to as a ballot measure, but regardless of the name they are “proposals to enact new laws or constitutional amendments.”<sup>22</sup> The proposal is added to the ballot using a petition.<sup>23</sup> Only 26 of the 50 states have a ballot initiative process.<sup>24</sup>

Voters in certain states have proposed, and passed, ballot initiatives to create laws addressing the raising of farm animals.<sup>25</sup> California’s Proposition 2, which was passed in 2008, prohibited confinement of certain animals in a manner which did not allow them to turn around freely, lie down, stand up, and fully extend their legs.<sup>26</sup> Proposition 2 dealt with the confinement of pregnant pigs, calves being raised for veal, and egg-laying hens.<sup>27</sup> This law gave producers until January 1, 2015, to come into compliance with the regulations but only

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<sup>21</sup> *Id.*

<sup>22</sup> *What are ballot propositions, initiatives, and referendums?* UNIV. S. CAL., <http://www.iandrinstitute.org/quick-facts.cfm> (last visited Nov. 1, 2022).

<sup>23</sup> *Id.* (Proposals are added to ballots only after collecting signatures of a certain number of citizens.)

<sup>24</sup> *States with initiative or referendum*, BALLOTPEDIA, [https://ballotpedia.org/States\\_with\\_initiative\\_or\\_referendum](https://ballotpedia.org/States_with_initiative_or_referendum) (last visited Nov. 1, 2022).

<sup>25</sup> *See, e.g.*, Prevention of Farm Animal Cruelty Act, CAL. HEALTH & SAFETY CODE § 25990 (Deering 2022) (amended 2018); FLA. CONST. art. X, § 21 (amended 2002).

<sup>26</sup> CAL. HEALTH & SAFETY CODE § 25990 (2008).

<sup>27</sup> *Id.*

applied to those producers which were in California, but not producers in other states who sold their eggs in California.<sup>28</sup>

The next ballot initiative in California was Proposition 12, which was enacted in 2018. This proposition set certain measurement minimums for cages.<sup>29</sup> This time the law even went a step further to ban the sale of any animal raised in confinement which was not in compliance with the law, regardless of which state the animal was raised in.<sup>30</sup> In 2002, Florida voters passed an amendment that addressed the confinement of pregnant pigs, defining the way pregnant pigs could be confined.<sup>31</sup> The law was like the first California initiative, because it did not set minimum measurements.<sup>32</sup> The three voter enacted laws we just briefly examined are a great illustration of consumers taking matters into their own hands and addressing welfare issues.

### i. Problems with Ballot Initiatives

Ballot initiatives are without a doubt better than sitting back and doing nothing to address, or improve, the welfare of farm animals. Unfortunately, they still bring about challenges for both consumer and producer. One of the challenges is how they have the potential to harm in-state producers while allowing out-of-state producers to not change their behaviors. Secondly these initiatives seem to pit the consumer against the producer, instead of allowing them to work together to achieve the same goal. They have the potential to harm in-state producers while allowing out-of-state producers to not change their behaviors. Third, ballot initiatives are not available in all states. But, even those states which do allow them have

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<sup>28</sup>*Proposition 2*, UNIV. CAL., BERKELEY, <https://igslibrary.berkeley.edu/library/elections/proposition-2> (last visited Nov. 1, 2022).

<sup>29</sup>*California Proposition 12, Farm Animal Confinement Initiative (2018)*, BALLOTPEDIA, [https://ballotpedia.org/California\\_Proposition\\_12,\\_Farm\\_Animal\\_Confinement\\_Initiative\\_\(2018\)](https://ballotpedia.org/California_Proposition_12,_Farm_Animal_Confinement_Initiative_(2018)) (last visited Nov. 1, 2022).

<sup>30</sup> *Id.*

<sup>31</sup> *Animal Cruelty Amendment: Limited Cruel and Inhumane Confinement of Pigs During Pregnancy*, MICH. STATE UNIV. ANIMAL LEGAL & HIST. CTR., <https://www.animallaw.info/statute/fl-initiatives-florida-amendment-article-x-section-19-pregnant-pigs> (last visited Nov. 1, 2022).

<sup>32</sup> *Id.* (Not allowing confinement of a pregnant pig in a “cage, crate or other enclosure,” in such a way which prevented the animal from freely turning around).

possible constitutional challenges which can stand in the way of achieving their desired end goal.

The best example of in-state producers being harmed comes from California's Proposition 2. This law did not eradicate the sale of all eggs from hens raised in confinement not in compliance with the law, but only the eggs of hens raised in the state which were out of compliance.<sup>33</sup> At the time of the law being passed, the egg industry in California was a large player in the state's agriculture.<sup>34</sup> Also, during that time, California relied on imported eggs whether they be in liquid form or shell.<sup>35</sup>

For a California producer to be compliant with the law, they would be required to switch to non-cage production systems.<sup>36</sup> In order to switch to a non-cage production system, farmers would have increased production costs resulting in 20% higher than those out-of-state producers who could keep using the cage system egg-laying hens are typically raised in.<sup>37</sup> One study suggested this laws "impact would be the almost complete elimination of egg production in California."<sup>38</sup> The reasoning was relatively simple, the production cost of non-cage systems is too high when compared to the cage systems out-of-state producers would be able to use, giving California producers very little ability to compete in the market.<sup>39</sup> This is not to say all in-state production would be eliminated. There would likely be smaller farms who kept producing, but the large-scale operations would have to decide if the non-cage production system was one in which they could remain competitive. The price of eggs was not expected to increase significantly, because out-of-state producers had "already demonstrated their ability to compete successfully in the California market."<sup>40</sup> The new law would not have any effect

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<sup>33</sup> *California Proposition 2, Farm Animal Confinement Initiative*, BALLOTPEdia, [https://ballotpedia.org/California\\_Proposition\\_2,\\_Farm\\_Animal\\_Confinement\\_Initiative\\_\(2008\)](https://ballotpedia.org/California_Proposition_2,_Farm_Animal_Confinement_Initiative_(2008)) (last visited Nov. 1, 2022).

<sup>34</sup> DANIEL A. SUMNER ET AL., ECONOMIC EFFECTS OF PROPOSED RESTRICTIONS ON EGG-LAYING HEN HOUSING IN CALIFORNIA i (Univ. of Cal, Agric. Issues Ctr. 2008).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at ii.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.* at iv.

<sup>39</sup> SUMNER, *supra* note 34.

<sup>40</sup> *Id.* at v.

on how the eggs sold in California were produced, it would just change where those eggs were produced.<sup>41</sup> The economic ramifications of Proposition 2 were likely not intentional but are a great example of how these ballot initiatives present challenges the voter probably did not expect.

This leads us to our next consequence of ballot initiatives: animosity between consumer and producer. Where does the gap between producers, consumers, and their food come from? Almost all of the people in America agree that there is a connection between food production and the success of the country.<sup>42</sup> While most consumers say they spend time thinking about food production, a large majority of them admit to not knowing how the food gets to their dinner table from a farm.<sup>43</sup> More than 70% of consumers in America have very limited, or no knowledge, about what farmers and ranchers do, or even what those careers involve.<sup>44</sup>

If ballot initiatives are used to create the regulations of farm animal welfare, it is more than likely the consumer deciding what is or is not humane, not the farmer. When you consider this along with more than three quarters of all farmers saying the consumers have limited, or zero knowledge, about what is proper care for animals,<sup>45</sup> you can see why there would be a divide between these two groups. Farming is viewed as a highly profitable industry because the large companies are profitable, but very few understand the producers on the ground level are not experiencing the same profits as the corporations who sell the final product.

Farmers and ranchers both think very similarly to the consumer when it comes to issues surrounding the environment and how animals are treated.<sup>46</sup> Almost every farmer and rancher agreed the environment and humane animal welfare are important to their business.<sup>47</sup> So while consumers are passing ballot initiatives, farmers are having to jump through hoops to

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<sup>41</sup> *Id.*

<sup>42</sup> See *Nationwide Surveys Reveal Disconnect Between Americans and Their Food*, PR NEWSWIRE, (Sep. 22, 2011, 4:00 AM), <https://www.prnewswire.com/news-releases/nationwide-surveys-reveal-disconnect-between-americans-and-their-food-130336143.html>.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> PR NEWSWIRE, *supra* note 42.

comply with the laws. But, each side is after the same thing ultimately: humane welfare for animals. We are experiencing animosity between two groups, who are simply disconnected from each other. One of the biggest reasons for this disconnect is the lack of access for consumers to see what happens on a farm.<sup>48</sup> This divide could be addressed by a uniform code, through access to farms or educational information being dedicated to creating a more palpable relationship between the two sides. A uniform code drafted with both sides of the divide would allow for a set of regulations each side is likely to be happy with more so than if they had no voice in the process.

One final thing to consider when examining ballot initiatives is the possible constitutional challenges they could face once they have been passed and enacted. Since not every state allows for ballot initiatives it would lead to even more of a fractionated approach to animal welfare laws. The constitutional challenge which has been the basis for lawsuits against California's Proposition 12 was based on the Commerce Clause.<sup>49</sup> The Commerce Clause combined with the Necessary and Proper Clause,<sup>50</sup> is where the ability of Congress to regulate interstate commerce is grounded today. There are three channels in which Congress holds the power to regulate: (1) "the use of the channels of interstate commerce;"<sup>51</sup> (2) "the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities;"<sup>52</sup> and (3) "those activities having a substantial relation to interstate commerce, i.e., those activities that substantially affect interstate commerce."<sup>53</sup>

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<sup>48</sup> Victoria G. Myers, *Bridging the Gap Between Consumers and Producers*, PROGRESSIVE FARMER (Jan. 17, 2020, 5:58 AM), <https://www.dtnpf.com/agriculture/web/ag/news/business-inputs/article/2020/01/17/bridging-gap-consumers-food>.

<sup>49</sup> U.S. CONST. art. I, § 8, cl. 3 (giving the power to Congress to "regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes").

<sup>50</sup> *Id.* cl. 18 (giving Congress the power to "make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof").

<sup>51</sup> *United States v. Lopez*, 514 U.S. 549, 558 (1995).

<sup>52</sup> *Id.* (citing *Southern R. Co v. United States*, 222 U.S. 20 (1911)).

<sup>53</sup> *Id.* at 558–59 (citing *NLRB v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 37 (1937)).

While the Commerce Clause is a great avenue for a constitutional challenge, one must not forget about the dormant Commerce Clause which does not allow a state to create any tax or regulation “that discriminates against or unduly burdens interstate commerce.”<sup>54</sup> California’s Proposition 12 was challenged by the National Pork Producers Council for allegedly violating the dormant Commerce Clause because the law banned “the sale of whole pork meat (no matter where produced) from animals confined in a manner inconsistent with California standards.”<sup>55</sup> The main argument was the law “has an indirect ‘practical effect’ on how pork is produced and sold outside California.”<sup>56</sup> The ninth circuit court “rejected the argument that such upstream effects violate the dormant Commerce Clause.”<sup>57</sup> The reasoning of the court was that while the requirements of the law applied to both in-state and out-of-state producers, “and merely impose a higher cost on production, rather than affect interstate commerce.”<sup>58</sup> The plaintiffs argued the law was a violation of “the dormant Commerce Clause because it poses a risk of inconsistent regulations that undermines a ‘compelling need for national uniformity in regulation.’”<sup>59</sup> The court did not agree with this argument though because “[u]nless a state law at issue interferes with a system of national concern, it does not violate the dormant Commerce Clause.”<sup>60</sup> Further, the court reasoned “laws that increase compliance costs, without more, do not constitute a significant burden on interstate commerce.”<sup>61</sup>

The Supreme Court of the United States will be hearing oral arguments on California’s Proposition 12.<sup>62</sup> Most recently, the Solicitor General of the United States, Elizabeth Prelogar, has even spoke out against California’s law, saying she believes the law is a violation of the Dormant Commerce

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<sup>54</sup> *Gen. Motors Corp. v. Tracy*, 519 U.S. 278, 287 (1997).

<sup>55</sup> *Nat’l Pork Producers Council v. Ross*, 6 F.4th 1021, 1025 (9th Cir. 2021).

<sup>56</sup> *Id.* at 1028-29.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 1031.

<sup>60</sup> *Nat’l Pork Producers Council*, 6 F.4th at 1025.

<sup>61</sup> *Id.* at 1032.

<sup>62</sup> Monthly Argument Calendar For the Session Beginning October 3, 2022, U.S. (Sept. 28, 2022) [https://www.supremecourt.gov/oral\\_arguments/argument\\_calendars/MonthlyArgumentCalOctober2022.pdf](https://www.supremecourt.gov/oral_arguments/argument_calendars/MonthlyArgumentCalOctober2022.pdf).

Clause.<sup>63</sup> Prelogar, in her thirty-four page amicus curiae brief, concluded by saying “[t]he judgment of the court of appeals should be reversed . . .”<sup>64</sup> Prelogar’s reasoning was based in part on the decision in *Baldwin*, where the Court held “that when a State undertakes regulation of out-of-state commercial activity, it must at least advance a legitimate local interest. . .”<sup>65</sup> Further, in her brief, she said California was regulating an “out-of-state activity in service of an interest that is *not* a legitimate basis for regulation under our federal system of sovereign States.”<sup>66</sup> This ballot initiative being taken up by the Supreme Court is a great example of how state ballot initiatives can make the welfare regulations even more convoluted.

The same law was challenged by the North American Meat Institute (“NAMI”), alleging the law “operates as an impermissible protectionist trade barrier, blocking the flow of goods in interstate commerce unless out-of-state producers comply with California’s regulations.”<sup>67</sup> The district court denied the request for a preliminary injunction and the ninth circuit upheld the dismissal because they agreed there was a “lack of evidence that the state had a protectionist intent.”<sup>68</sup> NAMI appealed this decision to the Supreme Court, but the Supreme Court denied their petition.<sup>69</sup>

#### IV. Differing Approaches Amongst the States is a Problem

All fifty states have laws prohibiting animal cruelty.<sup>70</sup> These laws still present challenges or issues though. There are

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<sup>63</sup> Dan Flynn, *Solicitor General of United States Finds Prop 12 Violates Interstate Commerce Clause*, FOOD SAFETY NEWS (June 26, 2022), <https://www.foodsafetynews.com/2022/06/solicitor-general-of-united-states-finds-prop-12-violates-interstate-commerce-clause/#:~:text=1%2C%202022.,bars%20their%20sale%20in%20California>.

<sup>64</sup> Brief for Petitioners at 34, *Nat’l Pork Producers Council v. Ross*, No. 21-468 (U.S. argued Oct. 11, 2022).

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Complaint at 8, *N. Am. Meat Inst. v. Beccerra*, 420 F. Supp. 3d 1014 (C.D. Cal. 2019) (No. 2:19-CV-08569).

<sup>68</sup> *N. Am. Meat Inst. v. Beccerra*, 825 Fed. Appx. 518, 520 (9th Cir. 2020).

<sup>69</sup> BALLOTPEDIA, *supra* note 29.

<sup>70</sup> *Legal Protections for Animals on Farms*, ANIMAL WELFARE INST. (Oct. 2018), <https://awionline.org/sites/default/files/uploads/documents/FA-AWI-LegalProtections-AnimalsonFarms-110714.pdf>.



three main issues with state cruelty laws: (1) varying definitions; (2) enforcement difficulties; and (3) certain practices being exempt from the law. Not only does the definition of animal cruelty vary by state, but so does the definition of the term animal.<sup>71</sup> Most states have drafted their animal cruelty laws in a specific way to exclude particular classes of animals.<sup>72</sup> However, there does seem to be some consistency among states which do include farm animals in their law which is the definition of “every dumb creature.”<sup>73</sup> There is a strong majority of states who at least treat farm animals differently than companion animals under their animal cruelty laws.<sup>74</sup> Forty-nine of the states have statutes which are strictly criminal though, meaning the decision to prosecute is left in the hands of individual prosecutors. Broadly speaking, prosecutors have heavy caseloads already, so they are not very likely to prosecute an individual for animal cruelty unless the violation is outrageous.

The ability to gather evidence might also present another issue since the larger farming operations are located far from the public eye, making an investigation without a warrant nearly impossible. Another thing to consider is only the person violating the law is charged, allowing everyone else in the company to face no repercussions from prosecution. Removal of one bad actor does not get to the heart of the problem because those in managerial positions are not removed. Resulting in no change to company policies or compliance training. Which is a great reason to include animal cruelty statutes in a uniform code with civil penalties for those in control of the operations to face some sort of punishment.

In the same vein, numerous state animal cruelty laws create an exemption for “practices that are routinely performed on farm animals.”<sup>75</sup> Similar to the tort law standard of a reasonable person<sup>76</sup>, these laws “only protect farm animals from situations that no responsible farmer would defend.”<sup>77</sup>

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<sup>71</sup> *Id.* at 2

<sup>72</sup> ANIMAL WELFARE INST., *supra* note 12 at 2.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup>Legal Info. Inst., *Standard of Care*, CORNELL L. SCH., [https://www.law.cornell.edu/wex/standard\\_of\\_care](https://www.law.cornell.edu/wex/standard_of_care) (last visited Nov. 1, 2022).

<sup>77</sup> ANIMAL WELFARE INST., *supra* note 12 at 2.

Such as, “kicking ‘downed’ animals or stabbing animals with pitchforks in order to get them to move.”<sup>78</sup> Another example of certain practices being exempted from these laws when a practice is “common or recognized animal husbandry practices . . . unless the act is specifically prohibited.”<sup>79</sup>

## V. Federal Legislation Has Proven Ineffective

The area of farm animal welfare has three notable federal laws.<sup>80</sup> These laws, some would argue, do not actually achieve the goals they were set out to achieve, nor the goals their names would lead someone to believe they were created for. The first law we will examine is known as the 28-Hour Law, which focuses on the health and treatment of farm animals during transport.<sup>81</sup> Currently, the law states any person transporting animals interstate in a carrier, “may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.”<sup>82</sup> When taken at face value, the law appears to ensure the safety of farm animals which are being transported interstate. There are two reasons why the safety and welfare of such animals actually are not being protected by this piece of legislation.

First, three federal agencies are tasked with the enforcement of the law: United States Department of Agriculture (“USDA”); Department of Transportation (“DOT”); and Department of Justice (“DOJ”).<sup>83</sup> Secondly, the law has four exceptions, or loopholes: (1) if sheep are confined and the 28-hour period ends during the night they can be confined for 8 additional hours; (2) if there is an accident or an

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<sup>78</sup> *Id.* (citing Mercy for Animals, *Ohio Dairy Farm Brutality*, YOUTUBE (May 25, 2010), <https://www.youtube.com/watch?v=gYTKM1OHFQg>; see also Pamela D. Frasch et al., *State Animal Anti-Cruelty Statutes: An Overview*, 5 ANIMAL L. 69, 77-76 (1999) (explaining the state exemptions for livestock).

<sup>79</sup> *Id.* at 4.

<sup>80</sup> 49 U.S.C. § 80502 (2022); 7 U.S.C. §§ 2132-2158 (2022); 7 U.S.C. §§ 2132-2158 (2022).

<sup>81</sup> 49 U.S.C. 80502 (2012).

<sup>82</sup> *Id.*

<sup>83</sup> *A Review: The Twenty-Eight Hour Law and Its Enforcement*, ANIMAL WELFARE INST. (Apr. 2020), <https://awionline.org/sites/default/files/uploads/documents/20TwentyEightHourLawReport.pdf> [hereinafter AWI].

unavoidable circumstance, the animals can be confined longer than the 28-hour period; (3) if the owner of the animals makes a separate written request, the animals can be in confinement for a 36-hour period; and (4) if the vessel the animals are being transported in provides water, food, space, and the ability to rest the law does not apply.<sup>84</sup> Another factor worth noting is, there are not many areas along interstate highways which would provide adequate room for the animals to be unloaded in accordance with this law.

Having three different agencies tasked with enforcing the same law is not ideal, because their roles can be very confusing and make enforcement difficult. To make things even more challenging, neither the DOJ nor the DOT have enacted any specific regulations which would allow them to enforce the law.<sup>85</sup> The only regulation regarding the 28-hour law the DOJ states the Attorney General of the Criminal Division is assigned to supervising actions related to the law.<sup>86</sup> Unlike the other two, the USDA has authored a memo illustrating their role of enforcement, the “Statement of Policy under the Twenty-Eight Hour Law,” which they codified into the federal regulations.<sup>87</sup> In the early years of the law, the USDA assigned the Bureau of Animal Industry (“BAI”), to handle the monitoring of animals which were being transported interstate.<sup>88</sup> The BAI, which is no longer an agency, between 1906 – 1917 “reported approximately 9,000 violations of the Twenty-Eight Hour Law for prosecution, which resulted in \$426,818 in penalties” during that timeframe.<sup>89</sup> Upon the decreasing use of railroad cars to transport animals, the number of violations also decreased.<sup>90</sup> The second half of the Twentieth century continued the trend of decreasing reports of violations,

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<sup>84</sup> *Id.* at 2.

<sup>85</sup> *Id.* at 1.

<sup>86</sup> *Id.*

<sup>87</sup> *Id.*

<sup>88</sup> Michelle Pawliger & Dena Jones, *Animals in Transport Languish As Twenty-Eight Hour Law Goes off the Rails*, 25 ANIMAL LAW 1 at 6 (2018).

<sup>89</sup> *Id.* (citing Harry Goding & A. Joseph Raub, U.S. DEP’T OF AGRIC., BULLETIN NO. 589, THE 28-HOUR LAW REGULATING THE INTERSTATE TRANSPORTATION OF LIVESTOCK: ITS PURPOSE, REQUIREMENTS, AND ENFORCEMENT 17 (1918) [https://www.nal.usda.gov/sites/default/files/28hour1918\\_0.pdf](https://www.nal.usda.gov/sites/default/files/28hour1918_0.pdf) (accessed Sept. 11, 2018)).

<sup>90</sup> *Id.* (citing ANIMAL AND PLANT HEALTH INSPECTION SERV., USDA, *First Federal Law to Prevent Cruelty to Animals, Animals and Their Legal Rights*, 48, 50, ANIMAL WELFARE INST., (1990)).

“the DOJ did not bring any cases for violations of the Twenty-Eight Hour Law – on railroads or trucks.”<sup>91</sup> One of the main reasons for the decreasing number of violations “is due in part to the fact that the USDA did not affirm that the law applied to trucks until 2003.”<sup>92</sup> This affirmation was done via “an intra-agency memo explaining that the Statement of Policy also applies to animals shipped in trucks.”<sup>93</sup>

The American Welfare Institute (“AWI”) used the Freedom of the Information Act (“FOIA”), to request records from the USDA about the enforcement of the law and found “only 10 USDA enforcement inquiries into possible violations of the law over a 12-year period.”<sup>94</sup> AWI conducted online research to find one additional investigation, “bringing the total number of USDA investigations to 11.”<sup>95</sup> While the research showed six of the cases had sufficient evidence, “only one of these was reported to the DOJ to determine whether enforcement was appropriate.”<sup>96</sup> The AWI opined that the reasoning the violations were not being submitted to the DOJ was two-fold: “(1) USDA personnel are not provided the guidance needed to understand their role in the law’s enforcement, and (2) drivers are not required to provide documentation of the duration, mileage, or stops made on their trips.”<sup>97</sup>

To make matters worse, “AWI has obtained no evidence to suggest that the DOJ has played any role in the enforcement,” of the law regardless of the fact it “is codified within Title 49 of the U.S. Code, which is dedicated to transportation.”<sup>98</sup> We are currently only seeing investigations “if it is reported that a large number of animals died during transport, and/or there is public outcry.”<sup>99</sup> USDA has taken more initiative to enforce the law, through Food Safety and Inspection Service (“FSIS”), using “a notice to its slaughter establishment personnel informing them of [the law], and

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> AWI., *supra* note 83 at 2.

<sup>94</sup> *Id.* at 1.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> AWI., *supra* note 83 at 1.

<sup>98</sup> *Id.*

<sup>99</sup> *Id.*

advising inspectors to contact APHIS if they suspect a violation of the law.”<sup>100</sup> This directive gave inspectors certain things to look for in the animals, then have the inspectors question the driver about their compliance with the law.<sup>101</sup> If the driver did not cooperate or the inspector felt the symptoms of the animals were caused by violating the law, they were told to let APHIS know, so APHIS could investigate.<sup>102</sup> While this law has been in place for decades, we can see there has been very little action taken in conjunction with it in recent years.

The second issue with the Twenty-Eight Hour law mentioned above, are the loopholes for certain practices being exempted from violating the law. Not only are there the aforementioned loopholes, but according to the USDA, poultry is also exempt from the law.<sup>103</sup> With so many exceptions to this law, it is easy to see how difficult enforcement would be even without three different agencies having jurisdiction. The law needs to be clarified, and enforcement placed within a single agency.

Our next piece of legislation we are going to examine is the Animal Welfare Act<sup>104</sup> (“AWA”). The name alone would make most people think it protects the welfare of all animals, but in reality only applies to about two percent of animals in the United States.<sup>105</sup> The AWA excludes any animal that is “raised for human benefit.”<sup>106</sup> Farm animals are actually excluded in two ways: (1) certain categories are protected, and farmed animals are not one of them; and (2) the “definition of the word ‘animal’” being specifically excluded.<sup>107</sup> The reason for this exclusion can be traced back to the origin of the AWA which “was originally the Laboratory Animal Welfare Act.”<sup>108</sup>

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<sup>100</sup> *Id.*

<sup>101</sup> *Id.* (explaining the signs they were told to look for in the animals were exhaustion or dehydration).

<sup>102</sup> *Id.*

<sup>103</sup> Gaverick Matheny & Cheryl Leahy, *Farm-Animal Welfare, Legislation, and Trade*, 70 L. & CONTEMP. PROBS. 325, 335 (2007).

<sup>104</sup> 7 U.S.C. §§ 2131-2160.

<sup>105</sup> Matheny & Leahy, *supra* note 103 at 334.

<sup>106</sup> Michael McFadden et al., *Animal Welfare Act: Excluded Animals*, 25 ANIMAL L. 203, 204 (2009).

<sup>107</sup> *Id.* (citing *Farm Animal Statistics: Slaughter Totals*, HUMANE SOC’Y U.S., <https://www.humanesociety.org/resources/farm-animal-protection-faq#what-can-i-do>).

<sup>108</sup> *Id.* (citing *Legislative History of the Animal Welfare Act: 1960s*, USDA. NAL, <https://www.nal.usda.gov/awic/legislative-history-animal-welfare-act-1960s>).

When the name was changed in 1970, they attempted to change the language and definition which would have included “any warm-blooded animal.”<sup>109</sup> The proposed language was not adopted though, so the bill remained basically unchanged except for the name.<sup>110</sup>

Some have argued the reason farmed animals were not included in the 1970 bill was two-fold: (1) “doing so would have been considered too costly;” and (2) “including farmed animals was seen as unnecessary.”<sup>111</sup> In our current agricultural production environment, the argument regarding cost seems to carry the most weight. The area where most production animals are raised is not spacious, and usually requires the animals to have food brought to them.<sup>112</sup> Further, the genetic makeup of the farmed animals, specifically chickens have been bred and genetically modified to “grow so obese so quickly that up to a third of them can’t walk correctly.”<sup>113</sup> Due to the AWA only applying to those animals which are being raised for exhibition, research, or companion purposes we only see a small percentage of the animals in our country actually being protected by this act.<sup>114</sup>

The final piece of federal legislation we will examine is the Humane Methods of Slaughter Act (“HMS”).<sup>115</sup> The HMS was designed to ensure “humane methods of slaughter to prevent the needless pain and suffering of livestock.”<sup>116</sup> When

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<sup>109</sup> *Id.* (citing *Care of Animals Used for Research, Experimentation, Exhibition, or Held for Sale as Pets: Hearing on H.R. 13957 Before the Subcomm. on Livestock and Grains of the H. Comm. on Agric.*, 91st Cong. 84 (1970) (statement of Hon. G. William Whitehurst)).

<sup>110</sup> *Id.* at 205.

<sup>111</sup> McFadden et al, *supra* note 106 (citing *Care of Animals Used for Research, Experimentation, Exhibition, or Held for Sale as Pets: Hearing on H.R. 13957 Before the Subcomm. on Livestock and Grains of the H. Comm. on Agric.*, 91st Cong. 47 (1970) (statement of Dr. Charles S. Hobbs)).

<sup>112</sup> *Id.* (citing *Factory Farm Nation*, FOOD & WATER WATCH (2015), <http://perma.cc/8KAF-9EP2> (juxtaposing natural conditions and behaviors to farming conditions and behaviors)).

<sup>113</sup> *Id.* (citing *An HSUS Report: The Welfare of Animals in the Chicken Industry*, HUMANE SOC’Y U.S. (2013), [http://www.humanesociety.org/assets/pdfs/farm/welfare\\_broiler.pdf](http://www.humanesociety.org/assets/pdfs/farm/welfare_broiler.pdf)).

<sup>114</sup> Matheny & Leahy, *supra* note 103, at 334.

<sup>115</sup> Humane Methods of Livestock Slaughter, 7 U.S.C. §§ 1901 – 1907.

<sup>116</sup> Emma Burgess Roy, Note, *Cruelty on Your Plate: The Misadministration of the Humane Methods of Slaughter Act*, 3 MID-ATL. J. ON L. AND PUB. POL’Y 93, 95 (2015) (citing 7 U.S.C. § 1901 (1958) (Enacted for “the purpose of preventing the inhumane slaughtering of livestock.”)).

enacted the HMS suggested the best way to slaughter an animal was “through a gunshot or captive bolt to the head before slaughter.”<sup>117</sup> Similarly to the Twenty-Eight Hour Law, chickens were not explicitly mentioned in the HMS.<sup>118</sup> The HMS is enforced by the USDA, which has passed the baton to FSIS for enforcement purposes.<sup>119</sup> Until the HMS was amended in 1978, it did not apply to meat slaughtered in foreign countries and sold to the United States.<sup>120</sup> When considering meat slaughtered and produced in foreign countries, it is very hard to ensure those factories overseas are following the HMS because the United States does not actually inspect them.<sup>121</sup> The only avenue we have to investigate the slaughtering process of foreign countries is through an application “to the USDA, and undergo[ing] an audit to show that their food safety and slaughter regulatory systems are equivalent to those in the United States.”<sup>122</sup> The only inspection for imported meat is handled at the ports where the meat is delivered.<sup>123</sup> So, while the meat is supposed to be from countries which follow equivalent systems, we truly have no surefire way of making sure the meat is actually slaughtered in accordance with the HMS.

While the HMS does allow for punishment to be administered in the form of civil penalties<sup>124</sup>, we once again run into an enforcement problem. According to a study published in 2015 by the Animal Legal Defense Fund, spanning two years using documents gained through FOIA, they found “a disturbing trend of inconsistent enforcement. .

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<sup>117</sup> *Id.*

<sup>118</sup> *Humane Methods of Slaughter Act*, ANIMAL WELFARE INST., <https://awionline.org/content/humane-methods-slaughter-act> (last visited Nov. 2, 2022).

<sup>119</sup> Roy, *supra* note 116, at 96-97.

<sup>120</sup> *Humane Methods of Slaughter Act.*, *supra* note 118.

<sup>121</sup> Roy, *supra* note 116.

<sup>122</sup> Roy, *supra* note 116, at 97 (citing FOOD SAFETY INSPECTION SERVICE, *FSIS Inspection and Grading of Meat and Poultry* (April 16, 2014), <http://www.fsis.usda.gov/wps/portal/fsis/topics/food-safetyeducation/get-answers/food-safety-fact-sheets/production-and-inspection/importing-meat-poultry-and-egg-products-to-the-unitedstates/importing-meat-poultry-egg-products-us> (describing FSIS meat inspection equivalency requirements and approval process for out of country meat producers).

<sup>123</sup> *Id.*

<sup>124</sup> *Id.*

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Since we are talking about federal legislation, there is one more piece of reality that needs to be pointed out, lobbying.<sup>127</sup> Not only will federal legislation have to face the hurdle of winning bipartisan support, but it will also face the hurdle of lobbyists and special interest groups. For an example of this, one must look no further than the 2018 Farm Bill, where Republicans were cheering, and Democrats booed.<sup>128</sup> The loudest voices in the political arena were not those sitting in Congress though, but those who participate in the legislative process without ever being elected to Congress, the lobbyists.<sup>129</sup> Lobbyists can no longer be ignored in the political arena, we are not here to argue they are good or bad. But we must acknowledge the power and influence they hold in our legislative process. Between 2011 – 2019, an investigation by USA Today, The Arizona Republic and the Center for Public Integrity discovered that at least 10,000 bills across the country were introduced featuring almost entirely copy-and-paste legislation special interest groups had drafted.<sup>130</sup> Over 2,100 of the bills were signed into law.<sup>131</sup> Agriculture is no stranger to the power of lobbyists, in 2020 the agribusiness sector spent \$142,285,917 on lobbying efforts.<sup>132</sup> There were 1,144 lobbyists employed by the agribusiness sector, and 58.3% of

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<sup>125</sup> See *Urging Enforcement of the Humane Methods of Livestock Slaughter Act*, ANIMAL LEGAL DEF. FUND, <https://aldf.org/case/urging-enforcement-of-the-humane-methods-of-livestock-slaughter-act/> (last visited Nov. 1, 2022).

<sup>126</sup> *Id.*

<sup>127</sup> See *Guide to Lobbying Reporting*, N.Y. STATE JOINT COMM’N OF PUB. ETHICS (Feb. 2018), [https://jcope.ny.gov/system/files/documents/2018/02/chapter-1-lobbying-overview-and-definitions\\_0.pdf](https://jcope.ny.gov/system/files/documents/2018/02/chapter-1-lobbying-overview-and-definitions_0.pdf), (This is “any attempt to influence government decision-making”).

<sup>128</sup> See Katie O’Reilly, *The Draft 2018 Farm Bill is Good for Big Ag, Bad for Food Systems*, SIERRA CLUB (Apr. 27, 2018), <https://www.sierraclub.org/sierra/draft-2018-farm-bill-good-for-big-ag-bad-for-food-systems>.

<sup>129</sup> *Id.*

<sup>130</sup> *You Elected Them to Write New Laws. They’re Letting Corporations Do It Instead*, THE CTR FOR PUB. INTEGRITY (Apr. 4, 2019), <https://publicintegrity.org/politics/state-politics/copy-paste-legislate/you-elected-them-to-write-new-laws-theyre-letting-corporations-do-it-instead/>.

<sup>131</sup> *Id.*

<sup>132</sup> *Agribusiness Profile Year 2020*, OPEN SECRETS, <https://www.opensecrets.org/federal-lobbying/sectors/summary?cycle=2020&id=A> (last visited Nov. 1, 2022).



them were former government employees.<sup>133</sup> So even if we could draft legislation allowing for the federal government to effectively enforce it, we would have to face reality and realize the lobbying power the regulations would be up against.

## VI. What is a Uniform Act? Has it Been Done in Agriculture Before?

A uniform act has one main goal which is to “promote the uniformity of state law.”<sup>134</sup> All uniform acts are drafted by the Uniform Law Commission, which has drafted hundreds since their inception in 1892.<sup>135</sup> A uniform act is defined as having “a reasonable possibility of ultimate enactment in a substantial number of jurisdictions.”<sup>136</sup> A uniform code for farm animal welfare is not a new concept, the European Union implemented such a code in 1976.<sup>137</sup> The Council of Europe member states enacted the European convention for the Protection of Animals Kept for Farming Purposes.<sup>138</sup> All farm animals must be provided care that is “appropriate to their physiological and ethological needs.”<sup>139</sup> The European Union did not stop there though. Next, they set the minimum standards for veal calves which prohibited the use of tether and required all units built after 1994 have at least enough room for calves to turn around.<sup>140</sup>

Additionally, in 1999, they passed an amendment with a delayed effective date of 2007 which explicitly prohibited confining calves, older than eight weeks, in individual pens, unless a veterinarian determined otherwise.<sup>141</sup> They also implemented new standards for laying hens prohibiting the construction of new barren battery cages and prohibited the use

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<sup>133</sup> *Id.*

<sup>134</sup> Deanna Barmakian, *Uniform Laws and Model Acts*, HARV. L. SCH. LIBR. (Aug. 17, 2022), <https://guides.library.harvard.edu/law/unifmodelacts>.

<sup>135</sup> *Id.*

<sup>136</sup> *Restatements of the Law and Uniform Laws: Uniform Laws & Model Acts; Introduction and Explanation*, CHICKASAW NATION L. LIBR. OKLA. CITY UNIV. SCH. OF L., <https://libguides.okcu.edu/c.php?g=225285&p=1492987> (last visited Nov. 1, 2022).

<sup>137</sup> Matheny & Leahy, *supra* note 103, at 339.

<sup>138</sup> *Id.*

<sup>139</sup> *Id.*

<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

of all barren battery cages after 2012.<sup>142</sup> Swine production was their next goal, in 2001 an amendment was passed prohibiting tethers, any new gestation crates after 2003, and eliminating the use of all gestation crates by 2013.<sup>143</sup> Lastly, they even require mandatory animal welfare training for all personnel involved in farm animal production.<sup>144</sup> The European Union has shown it is possible to create a uniform set of laws, across states, that allows for progressive changes to be made over time.

## VII. Conclusion

Upon reviewing the issues with federal farm animal welfare legislation, the disparities in state laws, ballot initiatives causing more divide along with less uniformity, how a uniform code is designed, and the European Union's uniform code makes the Uniform Farm Animal Welfare Code the solution. While the language of the new code would face scrutiny from all parties involved, allowing the Uniform Law Commissioners to draft this code would be the most effective way to provide adoptable language. We cannot ignore the last hurdle in this process though, adoption would have to be at the state level. The code being drafted would be meaningless if every state does not adopt it, so the final piece of the puzzle would be garnering nationwide support to pressure state legislatures to pass it. One avenue to create such support would be to call on those who already spend billions in the agribusiness sector to help. Lobbyists are part of our legislative process, whether we like it or not, so we might as well use them to achieve the goal of farm animal welfare nationwide. Let us make all farm animals, in every state, happy. Not just the cows in California.

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<sup>142</sup> Matheny & Leahy, *supra* note 103, at 339.

<sup>143</sup> *Id.* at 340.

<sup>144</sup> *Id.*