

Editorials are written by or approved by members of the Capital Press Editorial Board.

All other commentary pieces are the opinions of the authors but not necessarily this newspaper.

Opinion

Editor & Publisher
Joe Beach
Managing Editor
Carl Sampson
opinions@capitalpress.com | CapitalPress.com/opinion

Our View

Prop 12 is bad law that should be struck down

Next week the 9th U.S. Circuit Court of Appeals will hear a case to overturn California Proposition 12, an animal welfare measure approved by voters in 2018.

Officially the Farm Animal Confinement Initiative, Prop 12 bans the sale of eggs and pork and veal products in California unless production facilities meet animal-confinement standards dictated by the state. The practical impact of Prop 12 would be to impose California's animal husbandry rules on producers throughout the country.

It is bad law, and should be struck down.

The National Pork Producers Council and the American Farm Bureau Federation filed a federal lawsuit in U.S. District Court in San Diego, arguing that subjecting out-of-state producers to California's regulations violates the U.S. Constitution's Commerce Clause.

Article 1, Section 8 of the Constitution gives to Congress the power to regulate "commerce with foreign nations and among the several states."

Plaintiffs argued that Prop 12 would



National Pork Producers Council/Linked In
A California proposition dictates how farmers in other states must raise their hogs if they want to sell pork in the Golden State.

depend pork production in the United States and make it all but impossible for the pork industry to cater to the California market without mandating that all producers adopt that state's standard.

In similar cases the Supreme Court has adopted a two-tiered test to determine whether a state law violates the

Commerce Clause.

First, laws that "discriminate against interstate commerce" or "directly regulate extra-territorial conduct" are generally struck down.

Second, laws that "regulate even-handedly to effectuate a legitimate local public interest, and where its effects on interstate commerce are only incidental, will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefit."

The district court found that plaintiffs failed both tests, ruling that the purpose of Prop 12 was not specifically meant to regulate activity in other states and that its impacts on interstate commerce are limited to those who directly sell to California.

On its face, Prop 12 deals solely with products sold within the state. The animal welfare advocates who backed the measure, however, knew the larger impacts of Prop 12.

Part of a litter of pigs born in Iowa could be sold to feeders in Nebraska while others could go to North Carolina. All of the pigs

could go then to finishers in other states and end up in multiple packinghouses. Most of the animals that would be subject to Prop 12 reside outside California.

The nature of pork production, processing and marketing all but ensures that every out-of-state producer would have to comply with California rules.

Not only does Prop 12 require out-of-state producers to meet California animal confinement standards, it would require those producers to submit to inspections by California agricultural officials.

Prop 12's impacts on interstate commerce are anything but incidental.

We do not dispute California's authority to regulate livestock production within its borders. But what if Texas, Florida or any of the other 49 states passes equally strict rules that are at odds with those outlined in Prop 12? How could a national food system function with 50 different sets of rules?

In similar cases, the 9th Circuit has upheld the Commerce Clause — as have several other jurisdictions. We await a favorable verdict.

Our View

Comparing apples to Apple

As legislators continue to debate whether and how much overtime pay should be paid to farmworkers who pick apples and do other jobs on Washington's and Oregon's farms, we were reminded of another Apple — the maker of the iPhone.

Instead of being reviled as a company that takes advantage of its workers in China, Apple is seen as the very model of a modern corporation. With a market capitalization of more than \$2 trillion, Apple is the largest company in the world and the darling of Wall Street and Main Street.

But let's take a close look at Apple and how its Chinese contractors treat workers compared to how a typical apple orchard's workers are treated.

First, let's look at Apple's iPhone, the company's cash cow. Now ubiquitous in the U.S. and much of the world, the iPhone debuted in 2007 for about \$200. The latest model costs 5 1/2 times as much.

So how much does that \$1,100 iPhone cost to make? According to NBC News and the Investopedia website, workers at Foxconn or one of the other companies that assemble the iPhone in China make a base salary of about \$295 a month. Typically, companies in China pay a weekly salary for a set number of hours.

China officially has a 40-hour workweek, but iPhone factory workers during peak periods put in more than 100 overtime hours a month, according to CNBC.

The cost of materials for that iPhone

is about \$490. Labor, shipping, marketing and administrative overhead also must come out of the purchase price. Apple does not publicize how those costs are broken down.

Now let's look at the apple. While much of the debate is about overtime, many apple pickers are paid by how much they pick. When that is broken down on an hourly basis, it can range from the minimum wage — \$13.69 in Washington and \$12 in Oregon — to over \$20 an hour.

But the tree fruit industry — and the dairy, nursery and other labor-intensive agricultural industries — all face chronic labor shortages.

To fill that gap, many apple growers lean heavily on the H-2A foreign guest-worker visa program. This allows farmers to bring in workers from such countries as Mexico to pick apples.

Under the H-2A program, farmers pay to transport workers from their home countries and back and provide housing once they get to the U.S. The federal government also mandates a higher minimum wage — \$16.34 an hour this year in Washington and Oregon — that must be paid to H-2A workers and any domestic workers who work alongside them.

Depending on prices and which apple varieties they grow, many orchardists typically break even or make money. They maintain that paying pickers time-and-a-half for more than 40 hours a week would likely turn their bottom lines red.

Some legislators fantasize that apple growers can simply jack up the price of their apples to cover added labor costs. As price takers, farmers cannot do that.

Only the other Apple can jack up its prices at will — and get cut-rate Chinese labor to boot.

That brings to mind an interesting choice. When Apple was looking for a place to make its iPhone, it didn't build a plant in the U.S., which has strict labor laws and environmental regulations. Apple chose China, where there's a certain opaqueness about how workers are paid and treated.

Interestingly, China also produces the other kind of apple. In fact, it is the world's largest apple producer, with a harvest of 41 million metric tons last year. That's nearly nine times the size of the U.S. apple harvest. One wonders whether those apple pickers received a \$12-an-hour minimum wage and time-and-a-half overtime pay or whether farmers have to meet strict labor and environmental regulations.

Which makes us worry about what will happen when apples from China and other low-cost producers compete against U.S. apples here or in overseas markets.

But it also makes us wonder why legislators are spending so much time debating overtime pay for workers who by any measure are well-paid when they are silent on the world's largest multinational company that low-balls every part of its operation — except the price.

The future of Columbia-Snake River hydro operations?

Over the past 30 years, the Columbia-Snake River Irrigators Association (CSRIA) has steadfastly defended the Lower Columbia-Snake River hydro projects. The CSRIA believes to this day that these projects contribute substantially to the economic vitality of the region. But formidable parties to the Lower Snake River Dam operations seek to "breach" the dams, including EarthJustice, the state of Oregon, several Tribal interests, a multitude of environmental groups, and even some municipal and elected representatives.

GUEST VIEW

The Columbia-Snake River Irrigators Association

What is now happening? What about the federal hydro agencies' "new" environmental impact statement (EIS) and biological opinion (BiOp)?

Following a successive string of court victories, EarthJustice, Oregon, and others have challenged the new EIS "preferred alternative," because it did not include dam breaching/draw-downs, perceived as optimizing fish survival requirements. The environmental groups stress that the EIS evaluations did acknowledge that dam breaching would likely lead to higher fish survival, but the hydro agencies determined that the economic costs to the power, navigation and irrigation sectors were unacceptable. The court will review EarthJustice's claim, and injunctive relief motion, in the next few months.

Does Congress or the federal judiciary have the power to authorize dam breaching decision?

The U.S. District Courts have ruled that they have extensive powers to order agencies to "rebalance" the purposes of the federal hydro projects — both on the Columbia River system and elsewhere. In effect, the courts hold that they have the (congressionally authorized) rebalancing authority under the Northwest Power Act ("equitable treatment" for power and fish), per the ESA mandates, and perhaps even under new applications of the Clean Water Act. Under existing court approved BiOps, the hydro system has already relinquished about 1,200 MWs of firm power.

It is a small reach for the Court to order further "rebalancing" operations. CSRIA has grimly concluded that U.S. District (Oregon) Court Judge Michael Simon will rule against the hydro agencies' EIS-BiOp, and give EarthJustice Court-ordered relief; likely to include a Lower Snake River dam breaching plan, with a court-appointed river master to ensure oversight. Injunctive relief motions will be filed in July 2021.

What can CSRIA do to confront the future?

Against this backdrop, U.S. Rep. (Idaho) Mike Simpson has released a very far-reaching dam breaching "mitigation plan," allocating about \$34 billion to many affected (or potentially impacted) parties. For the irrigators, water rights are protected, but about 91,000 acres would experience severe pumping problems requiring major retrofits. Rep. Simpson views court directives as being inescapable; Govs. Jay Inslee and Kate Brown, regional Tribes, and others, support this mitigation review.

CSRIA must engage prudently and realistically in this process — not being directly involved is a reckless proposition. The CSRIA must ensure that its members' businesses and livelihoods, and related community economic support services, are well represented in the mitigation discussion. As well, CSRIA concurs with Gov. Inslee's Office that diverse Lower Snake River project operations should receive full review.

The Columbia-Snake River Irrigators Association (CSRIA) represents many of Eastern Washington's most prominent farming operations, with its members irrigating about 300,000 acres of prime row crop, vineyard and orchard lands.

A farmer's opinion of the Scout Energy Wind Farm Project

To the residents of the Tri Cities: In light of the ongoing debate about the Scout Wind Farm Project, I think it is time you are introduced to your neighboring community in the Horse Heaven Hills.

Yes, you heard that right. There are people that live in this dry, barren and seemingly isolated plateau that borders the south of Tri Cities.

You see, these hills are more than an afternoon escape for your bike rides and hikes. This is more than a place where you take scenic Sunday drives. This is more than the home of beautiful sunsets featuring Mount Adams, Rainier and Hood. This is more than the scenic view from your backyard.

And to another group of Tri Cities residents: This is more than a place for you to dump trash, unwanted dogs or dead livestock when you think nobody is looking. This is more than a place for your high school kids to take their girlfriend on Friday night. This is more than "the place where the dust comes from." This is more than a place for you to drive your Jeep and tear up a freshly seeded field. This is more than a place for you to go shooting and start wildfires in July. This is more than the place where the Hillbillies live.

This is the home of a family-based community, which is very old. My family has been

GUEST VIEW

Christopher Wiley



here since 1946. Many others were original homesteaders here, who took a chance breaking out farm ground in a desert. We are proud to be dryland wheat farmers living on some of the driest non-irrigated farmland in the world.

This is the home of people whose neighbors live miles away, not city blocks. This is the home of people who get excited when they see rain clouds for the first time in weeks and are often disappointed when they change their path at the last minute, leaving their crops dry and thirsty.

This is the home of people who do without modern luxuries like wells or city water service, sewage service or reliable high-speed internet.

This is the home of people who started a volunteer fire department because they watched their friend burn up in a tractor trying to save his crop from wildfire. This is the home of people who face frequent hardships such as drought, blizzards, dust storms, poor crop prices, constantly rising input costs and increasing restrictions on how we make a living.

This is the home of people

who watch housing developments pop up on land that used to be the farm of their grandfather's best friend. This is the home of people who patch up their 20-year-old harvester, their 75-year-old plow and their 60-year-old planter year after year because the new technology coming out just isn't designed for such a small niche market.

This is a community of survivors, forgotten by the world and whose numbers are ever shrinking, but not going anywhere anytime soon. And lately we are feeling rather betrayed by our neighbors in the Tri Cities.

You see, we have recently been given a great opportunity. An opportunity to diversify our farm operation, increase our land value and raise our bottom line. An opportunity to insulate ourselves from unstable crop markets. An opportunity to maybe update some of our farm equipment and hopefully enter the 21st century one of these days.

An opportunity to not be quite so reliant on rain and financial aid to send our kids to college. An opportunity that will maybe let my father retire someday, instead of working himself to an early death like his father and grandfather before him. The name of this opportunity is the Scout Energy Wind Farm.

Now I'm not here to argue about how much energy these turbines will produce, where

they will send it, or how they will store it. I'm not going to tell you I think they look pretty. But I will say shame on you for pretending to care about the beauty of an area that up until now, you have treated as your personal playground, your dumpster, a shortcut to Oregon, or the future site of more houses.

Shame on you for condemning construction on a ridge while hoping to someday build a mansion on the very same hill. Shame on you for being this upset about something that at the very most, would be a slight change to your backyard view. Because this same thing would be an absolute life-changing blessing to your neighboring community.

In closing, please don't feel this was written to bash the Tri Cities. The Tri Cities is a great community, which the Horse Heaven community benefits from as well. Every once in a while when we get a wild hair, we do get off our tractors and come to town. And guess where we go to buy groceries and clothing? Guess whose restaurants and small businesses we love to support? Yes that's right, we deeply care for, respect and support the Tri Cities community. We are just asking for the same in return. May we all grow and thrive together.

Christopher Wiley lives and farms in the Horse Heaven Hills of Eastern Washington.