



Written by [Luis Miguel](#) on July 22, 2023

Recent SCOTUS Decision Highlights Growing Schism Between States

The cracks in the union are deepening as polarization and the national divide grow. Even the highest court in the land seems at a loss as to how to respond.

A recent [Supreme Court case](#) dealing with state economic regulations resulted in a rare divide that transcended the usual ideological lines.

The case looked at California's Proposition 12, which establishes a requirement that pig farmers, both in-state and out-of-state, give more space to mother pigs if they want authorization to sell their pork in the Golden State.



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The Supreme Court ultimately upheld Proposition 12 by a close 5-4 margin. In the majority were conservative justices Neil Gorsuch, Clarence Thomas, and Amy Coney Barrett, joined by liberals Elena Kagan and Sonia Sotomayor.

Meanwhile, the minority consisted of conservatives John Roberts, Samuel Alito, and Brett Kavanaugh, joined by liberal Ketanji Brown Jackson.

The majority argued that California was within its right to regulate pork according to the specifications outlined in Proposition 12, as the state's rules apply equally to in-state and out-of-state producers of pork.

But the dissenting justices contended that the court should have taken into account the economic effects the California law has on interstate commerce. In total, the justices authored five different opinions supporting the majority opinion, with different combinations of justices jumping onto each one.

As [Politico](#) notes, the decision left questions unanswered, leaving the door open for further political battles between states and businesses:

The court's fractured majority didn't answer how it would rule on the types of laws that are almost certainly coming next. As Kavanaugh raised in a separate opinion, if California can dictate how pigs are raised in Iowa, can "a state law prohibit the retail sale of goods from producers that do not pay for employees' birth control or abortions (or alternatively, that do pay for employees' birth control or abortions)?"

... In California, [Gov. Gavin] Newsom vowed to cut ties with Walgreens this spring because the company said it would stop providing the abortion drug mifepristone in 20 states, mostly where abortion was banned or restricted. Nothing Walgreens was doing in those states was going to affect California residents, but Newsom made clear he was eager to throw California's weight around in order to push his team's moral preferences. "California is on track to be the fourth largest economy in the world and we will leverage our market power



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to defend the right to choose,” he said in a statement at the time, though the state did continue some business with Walgreens.

Florida is another example of a state that, under the leadership of a governor who is a hardline ideologue with the support of majorities of his party in the Legislature, has used the bully pulpit of the governorship to take actions that, though obviously limited to his own state’s borders, have a potential domino effect of affecting firms’ business practices throughout the country.

For example, DeSantis signed a law banning social media companies from kicking political candidates off their platforms. Just as California’s Proposition 12 ultimately affects the pork industry practices of other states (that is, so long as the companies in these states do not want to lose access to the lucrative California market), Florida’s law puts pressure on social media firms to apply these standards throughout the country.

Another aspect of the debate is the way in which states can use their regulations to coerce change in other states. As with the possibility raised by Kavanaugh above, states could put strict ideological, partisan rules on the products from other states.

A large state such as California, for instance, could require that firms wanting to do business in its borders must allow the employment of illegal aliens and refuse to cooperate with federal immigration authorities. Or that they must offer funding for their employees and employees’ children who want sex-change treatment.

These companies would then change their entire nationwide company policy to avoid losing business in California. And small states that depend on exports might even find themselves obliged to pass laws in accordance with the whims of California in order to remain economically competitive.

Of course, it could go the other way. Florida or Texas could pass laws prohibiting companies from offering their employees funding for trans procedures. To appease these states, the businesses would then implement that policy across the nation.

Sarah Isgur, the Justice Department spokeswoman under Jeff Sessions during the Trump administration, wrote at *Politico*:

These new maneuvers have been wildly effective for governors such as Newsom and DeSantis, and will no doubt be imitated by more and more states — yet they also point to a chaotic future, with business, travel and the flow of basic goods even more politicized and at the whims of leaders that only a small fraction of the public have any say over electing.

Given the ever-more fractured nature of the American political landscape, it’s likely that states will double down on wielding this form of legal, economic warfare to shift national policy in the absence of congressional legislation.



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