



ILLINOIS STATE BAR ASSOCIATION

# ANIMAL LAW

*The newsletter of the Illinois State Bar Association's Section on Animal Law*

## Federal preemption and animal regulation

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The United States Supreme Court recently overturned California's rule that prohibited the slaughtering or selling of non-ambulatory ("downer") animals for human consumption, holding that the Federal Meat Inspection Act (FMIA) foreclosed additional rules implemented at the state level. The case, *National Meat Association v. Harris*, pitted a trade association against California's Attorney General. Although the litigation was confined to the scope of the Federal Meat Inspection Act, the Court's holding could apply to other state efforts to regulate animal welfare.

The Department of Agriculture's Food Safety and Inspection Service (FSIS) administers the FMIA and has promulgated multiple regulations over the years regarding the inspection of

animals and meat, as well as other aspects of slaughterhouse operations. Under FMIA regulations, animals that arrive at a federally inspected slaughterhouse are approved for slaughter or designated as condemned or suspect. Condemned animals must be killed and kept out of the human food supply. Suspect animals, including downer animals, are monitored and, at the discretion of the federal inspector, eventually may be approved for human consumption. California's law, codified at section 599f of the Penal Code, however, prohibited the slaughtering or sale of downer animals for human consumption, and required slaughterhouses to euthanize all downer animals.

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The National Meat Association challenged the California rule, asserting that the FMIA expressly preempted the state's regulation of animals presented for slaughter at a federally inspected slaughterhouse. The FMIA's preemption clause prohibits states from imposing any additional or different requirements concerning slaughterhouse facilities and operations that fall within the scope of FMIA. 21 U.S.C. § 678. The FMIA also states, however, that it does not "preclude any State ... from making [a] requirement or taking other action consistent with [the FMIA], with respect to any other matters regulated under this Act."

The Supreme Court unanimously reversed the Ninth Circuit's judgment that upheld the California law. Under federal law, a slaughterhouse may find a downer animal fit for human consumption, but under the California law, a slaughterhouse must euthanize those animals, and exclude them from the human food supply. This discrepancy, the Court found, was the "fatal flaw" in California's downer animal rule.

With respect to other state efforts at animal welfare regulation, the Supreme Court's decision has several ramifications. First, it does not completely restrict the ability of states to regulate the type of animals that can be slaughtered for human consumption in federally inspected slaughterhouses. States can continue to create laws that pre-

vent particular animals from being transported to slaughterhouses. For example, the Court explained the critical distinction between state laws prohibiting the slaughter of horses, such as the Illinois Meat Act, and California's downer animal ban. A ban on horse slaughter does not affect the daily activities of slaughterhouses because the law prevents horses from being transported to the slaughterhouse in the first place. California's ban on downer animals functioned differently, because the ban affects the internal activities of slaughterhouses, and thus implicates the FMIA. California, or other states seeking to regulate downer animal slaughter, conceivably could check for and remove downer animals at an inspection station prior to the animal's arrival at the slaughterhouse.

Second, from a political perspective, the *National Meat Association* case also illustrates the unique tension between many interest groups with traditional ties to federal regulation due to a perception of stricter rules that may eliminate a "race to the bottom" scenario, and industry/trade organizations which often favor devolution of authority to the states to develop their own, more locally appropriate, rules. Equally interesting is the current joint effort between the Human Society of the United States (HSUS) and the United Egg Producers to push for the passage of H.R.3798, the Egg Products Inspection Act Amendments of 2012. This

bill would create a federal standard that requires using larger "enriched" caged housing systems, providing each egg-laying hen more space, creating uniform egg-carton labeling requirements, prohibiting excessive ammonia levels in henhouses, and prohibiting the sale of eggs and egg products that do not meet federal standards. HSUS has been pushing for similar legislation at the state level for years and was actively supportive of the California ballot measure (Proposition 2) that passed in 2008.

Although the proposed federal Egg Products Inspection Amendments are less stringent than California's legislation, HSUS nonetheless is supporting the federal law, in part because the states that produce the most eggs (e.g., Iowa) are unlikely on their own to implement stricter state regulations along the California model. An industry group, such as the United Egg Producers, often would work to oppose federal regulation of the industry, but in a scenario similar to the federal preemption under the FMIA, a revised Egg Products Inspection Act could benefit the egg industry by creating a uniform standard that preempts development of a patchwork of state regulations that are more stringent than those currently imposed by federal law. Regardless of whether H.R. 3798 passes, tensions between federal and state rules are likely to remain a hot topic. ■