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Federal Preemption and Animal Regulation

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On January 23rd, the U.S. Supreme Court 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 foreclosed additional rules implemented at the state level. The case, [National Meat Association v. Harris](#), pitted a trade association versus California's Attorney General—the state official charged with enforcing the statute. Although the litigation was confined to the scope of the Federal Meat Inspection Act (FMIA) in relation to the California rule, the Courts 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 the 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, but suspect animals, including non-ambulatory 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 a non-ambulatory animal for human consumption and required that slaughterhouses euthanize all non-ambulatory animals.

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 requirement concerning slaughterhouse facilities and operations that falls within the scope of the 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."

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The Supreme Court unanimously reversed the U.S. Court of Appeals for the Ninth Circuit's judgment that had upheld the California law. According to the Supreme Court, California imposed additional or different requirements on slaughterhouses. Under federal law, a slaughterhouse may find a non-ambulatory animal fit for human consumption, but under California's law, a slaughterhouse must euthanize all non-ambulatory animals and exclude them from the human food supply. This discrepancy was the fatal flaw in the California "downer animal" rule.

Moving forward, and 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 prevent 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 prohibition on the slaughter of non-ambulatory animals. A ban on horse slaughter does not affect the daily activities of slaughterhouses because the law prevents horses from being transported to the slaughterhouse itself. California's ban on the slaughter of non-ambulatory animals functions differently. Because animals become nonambulatory in transit to or after arrival at a slaughterhouse, the ban affects the daily internal activities of slaughterhouses, and thus the FMIA, as they will continue to encounter non-ambulatory animals. California (or other states seeking to regulate downer animal slaughter), conceivably, could check for and remove non-ambulatory animals at an inspection station prior to the animal's arrival at a slaughterhouse.

From a political perspective, the *National Meat Association* case also illustrates a unique tension between many interest groups with traditional ties to federal regulation of industries due to a perception of higher/stricter rules that may eliminate a "race to the bottom" scenario, and industry/trade organizations who often favor devolution of authority to states to develop their own, more locally appropriate rules. The non-ambulatory animal rule reversed this traditional alignment. Equally interesting is the current joint effort between the Humane 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 that provide each egg-laying hen more space, creates uniform egg carton labeling requirements, prohibits excessive ammonia levels in henhouses, and prohibits the sale of eggs and eggs products that do not meet the federal requirements. HSUS has been pushing similar legislation at the state level for a number of years, and was actively supportive of the California ballot measure (Proposition 2) that passed in 2008 and imposed [significant animal welfare standards for laying hens](#). Although the proposed Egg Products Inspection Act 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. On the other hand, 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 scope 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 and the issue of preemption, are likely to remain a hot topic in the animal agricultural context this year.