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Federal Meat Inspection Act's Broad Preemption Confirmed by US Supreme Court

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In an unusual show of unanimity, the United States Supreme Court in *National Meat Association v. Harris*[1] recently struck down a California state penal statute that had attempted to regulate the slaughter of swine in contravention of the Federal Meat Inspection Act ("FMIA").[2] Justice Elena Kagan, writing the opinion of the Court, recognized that the FMIA's strongly worded preemption clause signified Congressional intent to occupy the entire field of the commercial activity of slaughtering meat for human consumption. In overturning the Ninth Circuit Court of Appeals, which had held that the FMIA and the state statute regulated separate fields of commerce, the opinion indicates the Court's willingness to protect the rights of an industry from being impeded by state law when it is clear that application of a unified, national standard is the intent of Congress.

In 2008, the Humane Society of the United States disbursed an undercover video taken at a slaughterhouse in California that showed employees of the factory "dragging, kicking and electro-shocking sick and disabled cows" while attempting to move them for slaughter for human consumption. Release of the video triggered the largest beef recall in United States history, an action aimed to prevent the consumption of beef obtained from potentially diseased cows.

The release of the video also prompted the California legislature to enhance a preexisting penal statute that governed the treatment of nonambulatory animals to include animals present at slaughterhouses that are regulated under the FMIA. This statute, Cal. Penal. Code §599(f), proscribed a slaughterhouse (or related entity) from purchasing nonambulatory animals for butchering for sale for human consumption and mandated that all such animals be immediately, humanely euthanized. The maximum penalty for violating §599(f) was up to one year in prison and a $20,000 fine. The FMIA, on the other hand, permits the sale of meat for human consumption obtained from certain classes of nonambulatory animals when an official from the Department of Agriculture has certified the meat as being fit for human consumption.

A trade group, the National Meat Association ("NMA"), sued to enjoin the enforcement of §599(f), arguing that the FMIA preempted the application §599(f). The District Court granted a preliminary injunction to the NMA, noting that the state law was preempted because it expressly required swine to be handled in a different manner than the FMIA. The Ninth Circuit reversed, holding that §599(f) only regulated the "kind of animal that may be slaughtered," and did not regulate the inspection and slaughtering process itself which was clearly regulated by the FMIA. The Supreme Court granted *certiorari*.

[1] No. 10-224 (2012).
[2] 21 U.S.C. § 601 *et seq.*

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In reversing the Ninth Circuit, the Supreme Court heavily relied on the strongly worded preemption clause contained in the FMIA.[3] Justice Kagan's opinion accused California of using §599(f) to substitute "a new regulatory scheme" for the regulations lawfully laid down by the Department of Agriculture pursuant to the FMIA. In essence, "where under federal law a slaughterhouse may take one course of action in handling a nonambulatory pig, under state law the slaughterhouse must take another." Indeed, the opinion noted examples of the conflicting regulatory regimes: first, the state forbids the sale of meat from *all* nonambulatory animals, whereas the FMIA permitted the sale of such meat in certain circumstances. Second, the state proscribed the purchase of *any* nonambulatory swine by a slaughterhouse, whereas a federal regulation expressly contemplated such actions in certain circumstances.

The Humane Society's *amicus* brief's attempt to argue that § 599(f) merely regulated the sale of meat obtained from nonambulatory animals, not their purchase and slaughtering, did not persuade the Court. Indeed, Justice Kagan indicated that such an "incentive" to remove the meat in question from commerce "would make a mockery of the FMIA's preemption provision" because such a regulation would totally destroy the economic ability of the meat producer to comply with the FMIA by removing the ability to sell the meat in the California market entirely.

Finally the Court was unpersuaded by California's and the Humane Society's argument that the challenged provisions of §599(f) fell outside the scope of the FMIA. California had argued that §599(f) was not preempted because it simply excluded a certain class of animals from slaughter, whereas the FMIA only regulated the slaughtering process. However, Justice Kagan noted that the FMIA and its attached regulations give detailed rules that address the fact that a meat producer will necessarily encounter classes of animals that are ineligible for consumption (i.e., swine with hog cholera). Nonambulatory pigs, the Court noted, are simply not within the detailed federal list of excluded animals and thus, the detailed federal regulations governing their slaughter apply. While § 599(f)'s requirements indeed *differed* from those of the FMIA, they were not properly considered outside the scope of the FMIA. Using similar logic, the Court's opinion indicated that § 599(f)'s provisions dealing with humane treatment of animals fell within the scope of the FMIA and its attached regulations.

Noting that § 599(f)'s provisions fall within "the very heart" of the scope of the FMIA by attempting to "regulate the same thing, at the same time, in the same place" with different requirements, the Court relied on the preemption clause of the FMIA to establish the supremacy of the federal law and reversed the Ninth Circuit.

In addition to demonstrating the Court's willingness to reasonably construe statutes specifying clear federal preemption, the Court's decision will be of particular benefit to the meat packing and processing industry that is so comprehensively regulated by the FMIA. It will provide powerful support in any future legal controversies that will inevitably arise when states attempt to either enact or enforce measures that deviate in any way from the federal scheme.

[3] "Requirements within the scope of this [Act] with respect to premises, facilities and operations of any establishment at which inspection is provided under. . . this [Act] which are in addition to, or different than those made under this [Act] may not be imposed by any State." 21 U.S.C. §678.

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