

Civil Litigation & Legislation Update: What's Hot

**Animal Law Conference
Lewis & Clark
October 19, 2014**

The Nonhuman Rights Project (on behalf of Tommy) v. Lavery



State v. Nix



State v. Nix

ORS 161.067

...

(2) When the same conduct or criminal episode, though violating only one statutory provision involves two or more **victims**, there are as many separately punishable offenses as there are **victims**.

...

State v. Nix

“In any reasonable sense of the word, the ‘victim’ of [animal cruelty] offenses is the individual animal that suffers the neglect, injury, cruelty, torture, or death.”



Missouri v. Harris



California Health & Safety Code § 25996

“A shelled egg shall not be sold or contracted for sale for human consumption in California if the seller knows or should have known that the egg is the product of an egg-laying hen that was confined on a farm or place that is not in compliance with animal care standards set forth in [Proposition 2].”

Proposition 2

**California Health & Safety Code § 25990.
(Operative January 1, 2015)**

Prohibitions

In addition to other applicable provisions of law, a person shall not tether or confine any covered animal, on a farm, for all or the majority of any day, in a manner that prevents such animal from:

- (a) Lying down, standing up, and fully extending his or her limbs; and
- (b) Turning around freely.



Missouri v. Harris

Claims

- AB 1437 violates the Commerce Clause because it imposes excessive burdens on interstate commerce and attempts to regulate the behavior of out-of-state farmers
- AB 1437 violates the Supremacy Clause because it's preempted by the Federal Egg Products Inspection Act

Association des Eleveurs de Canards et d'Oies du Quebec v. Harris



Association des Eleveurs de Canards et d'Oies du Quebec v. Harris

Cal. Health & Safety Code § 25981

A person may not force feed a bird for the purpose of enlarging the bird's liver beyond normal size, or hire another person to do so.

Cal. Health & Safety Code § 25982

A product may not be sold in California if it is the result of force feeding a bird for the purpose of enlarging the bird's liver beyond normal size.

Cal. Health & Safety Code § 25980(b)

Force feeding a bird means a process that causes the bird to consume more food than a typical bird of the same species would consume voluntarily. Force feeding methods include, but are not limited to, delivering feed through a tube or other device inserted into the bird's esophagus.

Association des Eleveurs de Canards et d'Oies du Quebec v. Harris

Claims

- The Foie Gras Law violates the due process clause because it is unconstitutionally vague and fails to give fair notice of what it prohibits.
- The Foie Gras Law violates the Commerce Clause because it burdens interstate commerce.

Cal. Health & Safety Code § 25980(b)

Force feeding a bird means a process that causes the bird to consume **more food than a typical bird of the same species would consume voluntarily.** Force feeding methods include, but are not limited to, delivering feed through a tube or other device inserted into the bird's esophagus.

United States v. Richards

18 U.S.C. § 48

(a) Definition.—In this section the term "animal crush video" means any photograph, motion-picture film, video or digital recording, or electronic image that —

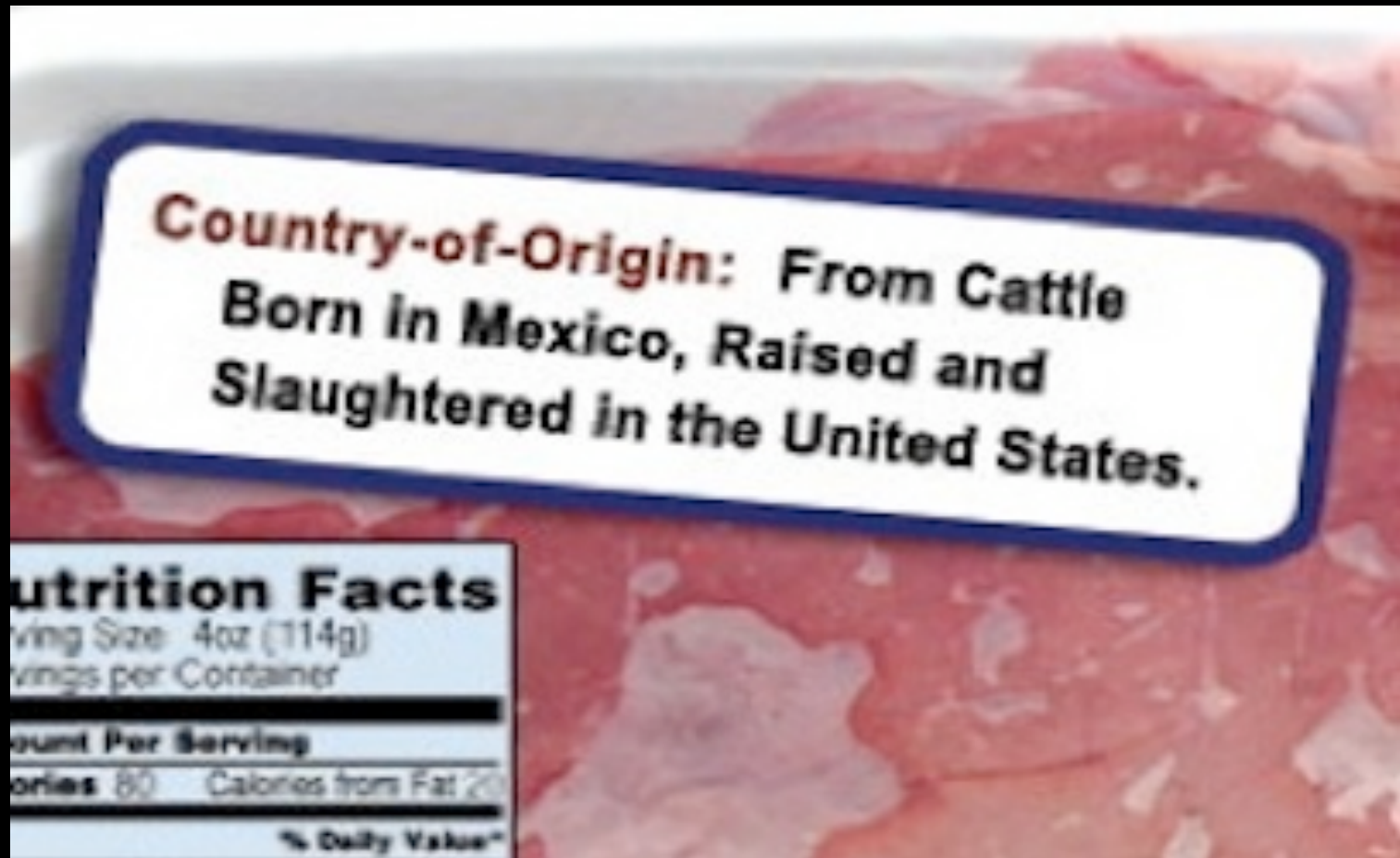
(1) depicts actual conduct in which 1 or more living non-human mammals, birds, reptiles, or amphibians is intentionally crushed, burned, drowned, suffocated, impaled, or otherwise subjected to serious bodily injury and

(2) is obscene.

United States v. Richards

“We hold that § 48 incorporates *Miller* obscenity and thus by its terms proscribes only unprotected speech.”

American Meat Institute v. USDA



Blum v. Holder



Animal Enterprise Terrorism Act

18 U.S.C. § 43 - Force, violence, and threats involving animal enterprises

(a) Offense.— Whoever travels in interstate or foreign commerce, or uses or causes to be used the mail or any facility of interstate or foreign commerce—

(1) for the **purpose of damaging or interfering with the operations of an animal enterprise**; and

(2) in connection with such purpose—

(A) **intentionally damages or causes the loss of any real or personal property** (including animals or records) used by an animal enterprise, or any real or personal property of a person or entity having a connection to, relationship with, or transactions with an animal enterprise;

(B) **intentionally places a person in reasonable fear of the death of, or serious bodily injury to that person,** a member of the immediate family (as defined in section 115) of that person, or a spouse or intimate partner of that person **by a course of conduct involving threats, acts of vandalism, property damage, criminal trespass, harassment, or intimidation**; or

(C) conspires or attempts to do so;

shall be punished as provided for in subsection (b).

Animal Enterprise Terrorism Act

ALDF v. Herbert and ALDF v. Otter



Other Significant Cases

- Animal Place v. Cheung
- ALDF v. Louisiana
- Hemy v. Perdue
- ALDF v. Great Bull Run
- ALDF v. Cal Expo
- Thompson v. Freilino



mliebman@aldf.org