

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

EMPACADORA DE CARNES DE '
FRESNILLO, S.A. DE C.V., '
BELTEX CORPORATION, '
and '
DALLAS CROWN, INC., '
Plaintiffs '
'

VS.

NO. 4-02CV0804-A

TIM CURRY, District Attorney, Tarrant '
County, Texas and BILL CONRADT, '
District Attorney, Kaufman County, Texas, '
Defendants '
'

AND

UNITED STATES DEPARTMENT OF '
AGRICULTURE, Party Needed for Just '
Adjudication. '

COMPLAINT

This lawsuit requests temporary and permanent injunctive relief be issued prohibiting Defendants from prosecuting Plaintiffs under a Texas statute, TEX. AGRICULTURE CODE, ' 149.001 et. seq., (Chapter 149), by declaring the statute conflicts with federal law that preempts state law and unconstitutionally prohibits an activity within the regulatory and legislative province of the federal government, and illegally regulates interstate and foreign commerce.

**1. Jurisdiction**

Jurisdiction in this Court is based on 28 U.S.C. ' 1331, because it is a civil action arising under the Constitutional, laws, or treaties of the United States. Additionally, diversity of citizenship jurisdiction is conferred as to foreign nationals under 28 U.S.C. ' 1332, and the amount in

controversy exceeds \$75,000. Because the actions threatened by Defendants are under the color of state law, and will deprive Plaintiffs of rights, privileges, or immunities secured by the Constitution of the United States and Acts of Congress, jurisdiction in this Court is provided under 28 U.S.C. ' 1343. The United, through an agency, is a necessary party, and no damages are sought against it, thus jurisdiction in this Court is under 28 U.S.C. ' 1346.

## **2. Background of the Case and Controversy**

**2.1.** The issue is whether Texas can prohibit the commercial activities that involve the purchase, transport, and sale of horsemeat for human consumption, where the consumers are outside of Texas and the United States. There are only two processors of horsemeat for human consumption operating in the United States. Both are located in Texas-Beltex Corporation and Dallas Crown, Inc. Their product is processed in Texas, is transported in Texas, and is shipped to foreign destinations from Texas. Plaintiffs make no sales of horsemeat for human consumption in the United States.

**2.2.** Horses and cattle, which had for centuries been raised and eaten in Europe, were first introduced into this continent about 500 years ago, with the Spanish conquests in the central and southern Americas. While horsemeat, like beef, poultry, and game has long been consumed in Europe, in the United States the human consumption of horsemeat has never been popular enough to warrant commercial sales. Nonetheless, the presence of millions of horses on this continent has justified commercial processing of horsemeat for human consumption abroad, and, therefore, slaughterhouses have profitably operated since the advent of refrigeration and means to safely transport meat.

**2.3.** The Texas Meat Inspection Law was passed by the Texas 49<sup>th</sup> Legislative Session in 1945. This act delegated to the State Health Officer the authority to regulate the processing and sale of the

edible meat of cattle, calf, sheep, swine, or goat. Its purpose was to Aprohibit and prevent the sale of food for human consumption of meat from criminals . . . and to provide adequate and uniform regulations for inspection of meat and meat produces intended for human consumption.@ Section 18 provided that A[i]t shall be unlawful to sell for food for human consumption meat from the carcasses of horses, dogs, mules, donkeys, cats or other animals not normally used for human food.@ The 51<sup>st</sup> Legislature in 1949 passed what is now Chapter 149, and expressly repealed Section 18 of the Act quoted above, as to horses, replacing that prohibition with a broader and more punitive prohibition. The original purpose of that Meat Inspection Act was to protect the public from unhealthy meat, but, as to horsemeat, the Legislature concluded that healthy or not, people should not sell horsemeat to others because that was not the kind of meat Anormally used for human food.@

**2.4.** In 2000, worldwide export of horsemeat from the twelve largest exporting countries was 131,963 metric tons. The United States exported 10,061 metric tons of processed meat, Mexico exported 2,159. Worldwide production of horses in 2000 was 672,109 metric tons, with Mexico being the second largest processor with 156,000 metric tons, and the United States having processed 20,500 metric tons of horses. In 2001, 11,940 metric tons of processed horsemeat was exported from the United States, worth more than \$41 million.

**2.5.** In the United States there are only two horsemeat processors, both Plaintiffs, and they process approximately 50,000 horses a year for foreign sales. Approximately 70% of the horses they slaughter are purchased from owners in other states, and transported in interstate commerce to the processing plants. Horses sent for slaughter are typically older, neglected, displaced or retired animals no longer useful for saddle, ranch, recreation, breeding or racing activities. These horses are often purchased by commercial horse-buyers at auctions for between \$300 to \$700, and are

transported to slaughterhouses that are regulated by state and federal agencies. Those who purchase horses and transport them to slaughterhouses are subject to extensive federal regulation. 21 U.S.C. ' 601 *et. seq.*

**2.6.** Like cattle, the horses are killed using humane methods, as required by the Humane Methods of Slaughter Act, 7 U.S.C. ' 1901 *et. seq.*, with United States Department of Agriculture (USDA) inspectors on site during all operating hours. 21 U.S.C. ' 603 *et. seq.* The Texas operations are subject to state supervision and regulation under TEX. AGRICULTURE CODE Ch. 148, which requires registration, the purchase of only marked or branded animals purchased with a bill of sale, with records kept as prescribed, and with payment of a \$2.00 fee to the Texas Agriculture Extension Service and \$4.00 to a designated state agency Afor each horse purchased for slaughter.@

**2.7.** In addition to the sale of horsemeat for human consumption, most parts of the horse carcass can be sold for other purposes, including baseball covers, shoes, leather products, pharmaceuticals used in open heart surgery, violin bows, pet food, fertilizer, and to feed zoo animals, some of which are endangered species dependent on horsemeat. Numerous organizations or persons will be irreparably injured if the Plaintiffs are not permitted to process horsemeat. Here are but a few examples. The Texas Animal Health Commission, an agency of the state, is permitted to have a technical representative at the facilities to test for equine disease. The authority for this is found in the Texas Agriculture Code, Chapters 161 through 168. Specifically, surveillance is undertaken for Aequine infectious anemia,@ an incurable disease caused by a virus and spread to animals by biting flies. Laboratory tests are done on the horses, in order to monitor this condition. Any tests that prove positive are traced back to the herd of origin through the record keeping required by the state and federal governments, so that herds can be handled according to appropriate regulations.

Members of the Sheriffs= Association of Texas contact the meat processors in their efforts to recover stolen horses. Beltex Corporation has served as coordinator in several USDA funded equine projects with the School of Veterinary Medicine of the University of California, Davis. These studies rely on samples, for various physiological studies examining basic immunological and stress mechanism and pathological processes. Texas A&M College of Veterinary Medicine is supplied equine reproduction tracts and feet for instruction to students in examination of abnormalities, nerve block procedures, and reproduction tracts for abnormalities and pregnancy determinations. Horse shoeing schools are provided cadaver legs to be used by students to learn proper hoof preparation for the application of shoes as well as for dissection for the study of the anatomy of the hoof and leg. Central Nebraska Packing, Inc. relies upon horsemeat products for diets which it prepares and sells mainly for exotic animals housed in zoos throughout the United States. These animals require a nutritionally balanced diet, which closely resembles the diet they would receive in the wild. If the two horse plants in Texas were closed this product would not be available. Among the customers purchasing horsemeat for their animals are the Dallas Zoo, Fort Worth Zoo, Houston Zoo, Austin Zoo, New York Zoological Society, Ziegfried & Roy, Denver Zoo, Miami Zoo, Baltimore Zoo, Ringling Brothers, Indianapolis Zoo, Little Rock Zoo, Oklahoma City Zoo, University of California, and many others. The Texas and Southwestern Cattle Raisers Association has inspectors at the facilities pursuant to state legislation, their purpose being to inspect and try to apprehend stolen horses and to build a data base for prevention of horse theft. Edwards Life Sciences L.L.C. is a global leader in products and technologies to treat advanced cat cardiovascular disease and the leading heart valve company in the world. Its products are sold in 80 countries, and it uses equine pericardia for the manufacture of life saving products including the equine pericardial patch, valve

replacement, cardiopulmonary bypass, left-ventricular assist device implantation, and numerous other procedures. Oklahoma State University has collected mare tracts utilized for teaching reproductive physiology and other equine courses.

**2.8.** Those who presently oppose the slaughter of horses for human consumption seek to protect the public solely from the possible offensiveness that might arise from foreigners eating horsemeat, which the Legislature considers meat not normally consumed by humans. No legitimate health or safety issues are involved, because the industry is subject to the identical regulations and inspections procedures applicable to other types of meat that are sold for human consumption. But there are people who oppose, and who would prohibit, the slaughter of horses for sale for human consumption, and the vehicle they seek to employ is TEX. AGRICULTURE CODE Ch. 149, by prosecuting those who process horse meat intended for human consumption, and enjoining their businesses from operation.

**2.9.** On February 13, 2002, a Texas State Representative requested from the Texas Attorney General an opinion about the enforceability of Chapter 149. In March 2002, letters urging the Attorney General to uphold the provision were submitted by lawyers representing the Society for the Prevention of Cruelty to Animals of Texas, Inc., the Humane Society of the United States, the Humane Society of Greater Dallas, and other groups with concerns for animals and horses. No brief submitted to the Attorney General suggested horsemeat posed health hazards to those who consume it, or that horsemeat was deceptively marketed. In response, the Texas Department of Agriculture suggested to the Attorney General that Chapter 149 was likely preempted by federal law<sup>@</sup> and that it was not authorized to enforce Chapter 149. On August 1, 2002, the Attorney General, in Opinion No. JC-0539, opined that Chapter 149 was not preempted by the federal Meat Inspection Act, 21

U.S.C. ch. 12, and that only county or criminal district attorneys could investigate and prosecute alleged violations of Chapter 149.

### **3. The Defendants**

**3.1.** Mr. Tim Curry is the elected District Attorney in Tarrant County, Texas, where Plaintiff Beltex Corporation operates its business. His office is at 401 W. Belknap, Fort Worth, Texas, where summons with this Complaint can be served on him. On August 29, 2002, Mr. Curry=s Assistant Criminal District Attorney Richard Alpert wrote Beltex a letter, in which he requested Beltex representatives to contact him because two Texas legislators had contacted Mr. Curry=s office about Chapter 149. The letter transmitted a copy of Chapter 149 and the Attorney General=s Opinion. Beltex representatives met with representatives from Mr. Curry=s office, and, as a result, believe investigation and prosecution to be imminent.

**3.2.** Mr. Bill Conradt is the District Attorney for Kaufman County, Texas, where the Plaintiff, Dallas Crown, Inc., operates its business. His office is at 100 W. Mulberry St., Kaufman, Texas 75142, where a summons with this Complaint can be served on him. On September 19, 2002, the Fort Worth Star Telegram reported that Mr. Conradt was investigating Dallas Crown and that he planned to file criminal charges.

### **4. The Plaintiffs**

**4.1.** Beltex Corporation is a Texas corporation, operating a meat processing plant in Fort Worth, Texas. Beltex has processed horsemeat for human consumption for 27 years, and all of the product for human consumption was exported from the United States. In the United States, Beltex sells its

product to zoos, and by-products for other non-consumption purposes. It has paid hundreds of thousands of dollars in property taxes, and paid significant fees to agencies of the State. Beltex employs 90 people, had gross sales exceeding \$30,000,000 in 2001, and processed more than 27,000 horses that year. Beltex pays more than \$3,000,000 a year for transportation in interstate and foreign commerce. If Chapter 149 is enforceable, Beltex will cease operations in Texas.

**4.2.** Dallas Crown, Inc. is a Texas corporation, operating a meat processing plant in Kaufman, Texas. Dallas Crown, Inc. processes meat for human consumption and all of that product is exported from the United States. In the United States, it sells its product to zoos, and other by-products for non-consumption purposes. It has paid hundreds of thousands of dollars in property taxes, and paid significant fees to agencies of the State of Texas. Dallas Crown employs 40 people, had gross sales exceeding \$9,000,000 in 2001, and processed more than 13,000 horses that year. Dallas Crown pays more than \$1,100,000 a year for transportation in interstate and foreign commerce. If Chapter 149 is enforceable, Dallas Crown will cease operations in Texas.

**4.3.** Empacadora de Carnes de Fresnillo, S.A. de C.V. is a corporation organized under the laws of Mexico, with meat processing operations in Fresnillo, in the state of Zacatecas, in north central Mexico, Empacador de Carnes employs 90 people. In 2001 its sales in pesos exceeded \$63,000,000, and it slaughtered in excess of 25,000 horses, while paying more than \$1,500,000 (Pesos) in freight charges. Most of its product is distributed in foreign commerce. Processed horsemeat for export for human consumption is transported by container truck from Fresnillo to Laredo, Mexico. It is placed in a bonded warehouse, where it must pass United States= customs and health inspection requirements. It is then delivered into Texas, and transported to the port in Houston or to Dallas-Fort Worth Airport for international airfreight delivery. If Chapter 149 is enforceable, Empacadora de



Carnes will not be able to transport its processed product through Texas, and will be denied access to an international port and airport. Texas Chapter 149 will impose a permanent embargo on its product entering or leaving Texas, subjecting the transporters to criminal liability, and will close, under the authority of Texas law alone, the 1200 mile border in Texas that separates Mexico from the United States. The effect of this Texas law is not to protect Texas residents from any food product or deceptive activity, because none of the product is sold to consumers in Texas, and all of the meets United States standards for food intended for safe human consumption.

### **5. Real Parties In Interest**

**5.1.** The State of Texas is a real party in interest as defined by Fed. R. Civ. P. 17. Because the two named defendants in their official capacities are representatives of Texas, it is not necessary to make Texas a party under Fed. R. Civ. P. 19. Because the validity of a state statute is being challenged under federal law, a copy of the Complaint is being sent to The Office of the Attorney General State of Texas, P.O. Box 12548, Austin, Texas 78711-2548.

**5.2.** United States of America, through the Department of Agriculture, is a real party in interest. As an agency of the executive branch, it implements policies of the federal government relating to the sale and distribution of horsemeat for human consumption in interstate and foreign commerce. It is subject to the jurisdiction of this Court, and its interests relating to the subject matter of this lawsuit are ones it may want to protect, as provided by Fed. R. Civ. P. 19(a)(i). A copy of this Complaint will be served on the Secretary of Agriculture, Ann Veneman, 1400 Independence Ave. S.W., Washington, D.C. 20250, the United States Attorney General John Ashcroft, at 5111 Main Justice Bldg., 10<sup>th</sup> St. and Constitution Ave. N.W. Washington D.C. 20530, and United States Attorney for the Northern District of Texas, James Boyle, 1100 Commerce, Dallas, Texas 75242.

## **6. Relief Requested**

**6.1.** Plaintiffs are under imminent threat of prosecution by the Defendants. The statute Defendants are relying on is illegal, facially and in application violates the interstate and foreign commerce clauses of the United States Constitution, purports to ban a commercial activity subject to preeminent regulation by United States statutes and executive branch regulations, contravenes treaties and international agreements and violates the Fifth Amendment. The threatened prosecutions, if charges are pursued, will cause the Texas Plaintiff=s businesses to fail or be closed. Ultimate success by the Plaintiffs in state courts could take so long that Plaintiffs will be put out of business in the interim.

**6.2.** To avoid irreparable injury and loss, Plaintiffs seek a declaration of their rights and legal relations, as provided by 28 U.S.C. ' 2201. Specifically, Plaintiffs seek a federal court declaration that Chapter 149 is not enforceable against them because its application is preempted by federal statutes and regulations. Alternatively, under state law, Chapter 149 has been repealed.

**6.3.** To prevent irreparable injury and loss to Plaintiffs until final disposition of this case, Plaintiffs seek, under Fed. R. Civ. P. 65, a temporary restraining order and temporary injunction enjoining prosecution of Plaintiffs under Chapter 149. Upon final judgment, Plaintiffs request a permanent injunction prohibiting enforcement of Chapter 149.

## **7. The Commerce Clause**

**7.1.** The Commerce Clause, U.S. Const. art. I, ' 8, grants Congress the authority to Aregulate commerce with foreign nations, and among the several States.@ Chapter 149 unconstitutionally violates this provision. States may not adopt laws that directly affect interstate and foreign

commerce. Congress sets the terms and conditions of interstate and foreign transportation of products.

**7.2.** While states have a limited area in which they can regulate activities affecting interstate and foreign commerce, Chapter 149 does not regulate Plaintiff's commercial activities - it forbids them entirely. It constitutes an internal trade barrier. Plaintiff Empacadora de Carnes cannot transport horsemeat in sealed containers from Mexico to Europe by passing into Texas, depriving it of two major ports of trade in which hundreds of millions of federal funds have been invested to encourage foreign commerce. Plaintiffs cannot transport horsemeat on interstate highway system in Texas, including Interstate Highways 45, 35, and 10, between Dallas, Houston, Fort Worth, and Nuevo Laredo, although the federal government spent hundreds of millions of dollars building these highways to encourage interstate and foreign commerce.

**7.3.** Chapter 149 does not regulate commercial activities; it prohibits them, far exceeding the limitation on the powers of the states under U.S. Const. art. 1, § 8. Processing, possession, or transporting healthy and USDA inspected horsemeat intended for human consumption, for a commercial purpose, is prohibited. Slaughtering a horse owned by an individual, intending to consume the meat or give it away, even if it may be unhealthy or has not been inspected, and even if those to whom it is given do not know it is horsemeat, is not prohibited by Chapter 149. There is no legitimate local public interest furthered by Chapter 149, except to protect some Texas residents from the possible offensiveness arising from knowing foreigners are eating horsemeat processed in Texas. Protecting people from offense occasioned by the tastes of others is too minimal a state concern to warrant the destruction of the employment and businesses of honest and law-abiding people.

**7.4.** Chapter 149 bans the exportation from any port in Texas of horsemeat intended for human consumption. State restrictions burdening foreign commerce are subject to rigorous and searching scrutiny. United States foreign policy requires that the federal government speak for the nation, providing one voice, not fifty. Because Chapter 149 prohibits otherwise legal foreign commerce, it contravenes the foreign commerce clause provision. This so burdens foreign commerce that no legitimate state end can justify the ban.

**7.5.** Chapter 149's prohibition against transportation from foreign countries into Texas of horsemeat for human consumption is an embargo. The purpose of Chapter 149 is to prohibit the sale, possession, or transportation of horsemeat to be sold for human consumption anywhere in the world. It does not aim to protect Texas residents, to whom Plaintiffs sell no product. Plaintiffs could slaughter horses for the sale of horsemeat for animal consumption, in pet food or zoo food, and Chapter 149 would not be violated. Plaintiffs could provide free the healthy horsemeat for human consumption. It is only the possession or transportation of horsemeat for sale for human consumption that is prohibited by Chapter 149. No legitimate state interest justifies Chapter 149, so that it can overcome the application of U.S. Const. art. 1, ' 8. Any legal interests served by Chapter 149 do not outweigh national interests.

### **8. Federal Statutory and Regulatory Preemption**

**8.1.** Congress has preempted state law conflicting with the statutory and regulatory provisions embodied in federal law.

**8.2.** Even purchase, handling, and the transportation of horses to the slaughterhouse is governed by federal law. The Commercial Transportation of Equine for Slaughter Act of 1996, 21 U.S.C. ' 601 *et. seq.*, preempts the field of transporting horses to slaughterhouses, and delegates to the

Department of Agriculture the authority to regulate this field. Regulations have been promulgated in 9 C.F.R. ' 88.1 *et. seq.*, prescribing in detail record keeping requirements for purchases and the humane procedures for handling horses intended for transportation for slaughter. Texas, by contrast, does not regulate transportation of horses for slaughter; it prohibits such transportation. Given that all horses processed for meat for human consumption are transported in, to, or from Texas, because the only two processing plants are in Texas, this defeats the Congressional purpose in the finding in 21 U.S.C. ' 602.

**8.3.** The Meat Inspection Act preempts the area of commerce to which Chapter 149 purports to apply. The scope of the Meat Inspection Act is set forth in 21 U.S.C. ' 602:

Meat and meat food products are an important source of the Nation=s total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate and foreign commerce. It is essential in the public interest that the health and welfare of consumers be protected by insuring that meat and meat food products distributed to them are wholesome, not adulterated, and properly marked, labeled and packaged . . . It is hereby found that all articles and animals which are regulated by this act are either in interstate or foreign commerce or substantially affect such commerce, and that regulation by the Secretary and cooperation by the states and other jurisdictions as contemplated by this act are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

The Act included provisions regarding examination of animals before slaughtering, humane methods of slaughter, post-mortem examination of carcasses, and inspection of meat food products. 21 U.S.C. ' ' 603, 604 and 606. Procedures for the examination of animals before slaughter and humane methods of slaughter, expressly included Ahorses, mules, and other equines.@ 21 U.S.C. ' 603.

**8.4.** Federal agricultural statutes regulate the slaughter animals. 7 U.S.C. ' 1902 specifically concerns humane methods of slaughter and provided specific methods of Ain the case of cattle, calves, horses, mules, sheep, swine and other livestock.@

**8.5.** Federal regulations govern the slaughter of animals for human consumption. 9 C.F.R. ' 301.2 provides a number of definitions relating to the Meat Inspection Act. Both the terms Alivestock@ and Ameat@ are defined to include Ahorse@ or Aequines@ when also referring to Acattle, sheep, swine, or goats.@ ACapable for use as human food@ references Alivestock,@ and horsemeat is capable of use as human food. The federal regulations contain provisions for inspection and slaughterhouses (Section 302.1), inspection of livestock offered for slaughter (Section 309.1), and humane methods of livestock slaughter (Part 313). The regulations apply to livestock pens, floors where livestock are kept, driveways and ramps, and the handling and herding of livestock. 9 C.F.R. ' ' 313.2 and 313.2.

**8.6.** In 1921 Congress passed the Packers and Stockyards Act, 7 U.S.C. ' 181 *et. seq.* The purpose of the Act was to secure the free and unburdened flow of livestock from the ranges in the West and Southwest to the stockyards and slaughterhouses, and then to their final destination. 7 U.S.C. ' 182 defines livestock so as to include Ahorses,@ while commerce includes all livestock products that will transit from a state after purchase to another state or foreign nation, 7 U.S.C. ' 183. Deceptive practices are prohibited by packers, processors, transporters, or sellers.

**8.7.** At least seven states expressly authorize the sale of horse meat: Arizona, Ariz. Rev. Stat. Ann., Section 3.2122; Florida, Fla. Stat. Ann., Section 500.451; Georgia, Ga. Code Ann., Section 26-2-156; Minnesota, Minn. Stat. Ann., Section 31.621; New Jersey, N.J. Stat. Ann., Section 24:16B-38; Ohio, Ohio Rev. Code Ann., Section 919.06-07; and Virginia Va. Code Ann., Section 3.1-884.24. Aside from Texas, only California appears to impose criminal penalties for slaughtering horses for human consumption. Cal. Penal Code, Section 598c.

**8.8.** The Commerce Clause of the United States Constitution gives the federal government the sole right to regulate commerce with foreign nations and among the states. U.S. Const. art. 1, ' 8, ch. 3. The federal government=s authority to regulate the slaughterhouse industry under the Commerce Clause was settled in the 1890's. Chapter 149 is not enforceable because it contravenes a field preempted by Congress and the Executive Branch.

### **9. Treaty and Trade Agreement Preemption**

**9.1.** United States Constitution art. VI provides that AThis Constitution, and the Laws of the United States . . . and all Treaties . . . shall be the supreme Law of the Land . . . .@

**9.2.** Effective August 1, 1999, the United States became a party to the AAgreement Between the United States of America and the European Community on Sanitary Measures to Protect Public and Animal Health in Trade in Live Animals and Animal Products.@ The purpose of the agreement is to facilitate trade in animal products between the United States and the members of the European Community. The agreement applies to animal products including fresh meat, including Equine meat products and red meat (equidae). The agreement provides that United States standards will be prescribed in 9 C.F.R. ' 94 for horsemeat. 9 C.F.R. ' 94.15(a) provides that A[a]ny animal product . . . which would be eligible for entry into the United States, as specified in the regulations in this part, may transit through the United States for immediate export@ if the specified conditions are met.

**9.3.** Empacadora de Carnes legally imports its horsemeat product that is intended for human consumption into the United States, in compliance with federal regulations. It is shipped from the United States to federally approved ports in Houston and at Dallas-Fort Worth International Airport, as provided by 9 C.F.R. ' 91.1-3. Chapter 149 cannot be enforced in this area of foreign commerce preempted by federal law.

**9.4.** The Agreement between the United States and the European Community authorizes the establishment and recognition of health standards and inspection procedures only by federal authority in the United States, through agencies of the federal government. States cannot promulgate or enforce regulations contrary to those of the federal government. Plaintiffs comply with the regulations applicable to the safety and inspection of horsemeat shipped to Europe for human consumption. Texas cannot criminalize the exportation and transportation in interstate and foreign commerce of horsemeat intended for human consumption.

**9.5.** The United States, Mexico, and Canada are parties to the North American Free Trade Agreement (NAFTA), effective in 1992. NAFTA was adopted and implemented by the ANorth American Free Trade Implementation Act.@ 19 U.S.C. ' 3301 *et. seq.* This Act requires the federal government to consult with the states and eliminate restrictions not compatible with NAFTA. 19 U.S.C. ' 1312. It does not permit private litigants to enforce its provisions, but, should it choose, the Department of Agriculture has standing to enforce the provisions in this case. NAFTA imposes on the United States the obligation to improve access to markets by Aelimination of import barriers to trade between them in agricultural goods,@ which includes horsemeat. Plaintiffs do not seek to invalidate Chapter 149 as inconsistent with NAFTA, which it is. Rather Chapter 149 is invalid under the Commerce clause, and NAFTA is the evidence that the area of foreign commerce between the United States and Mexico has been foreclosed to state regulation, and, particularly, embargo.

**9.6.** Since the eighteenth century a significant component of the United States foreign economic policy has been the conclusion of the treaties of Friendship, Commerce and Navigation (FCN treaties). These treaties establish favorable terms for mutual trade, shipping, and investments between the United States and other countries. Treaties of Friendship, Commerce and Navigation



are self-executing and must be enforced in federal courts. Examples of federal preemptive of the field of foreign commerce for exports between the United States and Mexico include the 1832 Treaty of Amity, Commerce, and Navigation and the 1974 Exchange of Information on Food and Drug Administration Regulated Products. These treaties and agreements, plus NAFTA, all reflect that the federal government has preempted the field of foreign commerce involving Mexico, the European Community, and the United States. Texas= embargo of foreign commerce between these countries by criminalizing the sale of horsemeat is preempted.

### **10. Due Process and Self-Incrimination**

**10.1.** United States Constitution, amendment V, provides that no person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.@

**10.2.** Texas has either repealed Chapter 149, or passed legislation so inconsistent as to violate Plaintiff=s due process rights under the Fifth Amendment. Enforcing Chapter 149 would constitute a taking of Plaintiff=s property without just compensation or due process of law. This Court has pendant jurisdiction to decide issues of state law, and should hold that TEXAS HEALTH AND SAFETY CODE ' 443.033, together with ' 433.007(a), repeals or supersedes Chapter 149.

**10.3.** TEX. AGRICULTURE CODE Chapter 149 directly conflicts with provisions of the TEXAS HEALTH AND SAFETY CODE. Section 433.033 of the TEXAS HEALTH AND SAFETY CODE provides:

A person may not sell, transport, offer for sale of transportation, or receive for transportation, in intrastate commerce, a carcass, part of a carcass, meat, or a meat food product of a horse, mule, or other equine unless the article is plainly and conspicuously marked or labeled or otherwise identified, as required by rule of the commissioner, to show the kind of animal from which the article was derived. The commissioner may require an establishment at which inspection is maintained under

this chapter to prepare those articles in an establishment separate from one in which livestock other than equines is slaughtered or carcasses, parts of carcasses, meat, or meat food products of livestock other than equines are prepared.

The statute permits a person to sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, meat or a meat food product of a horse, mule, or other equine, if the article is plainly and conspicuously marked or labeled or otherwise identified with the kind of animal from which the article was derived. A Meat food product is expressly defined in the TEXAS HEALTH AND SAFETY CODE as a product which is capable of use as human food and that is made in whole or part from the meat or other portion of the carcass of livestock. TEXAS HEALTH AND SAFETY CODE ' 433.003(13) A Livestock includes horses, mules, [and] other equines. TEXAS HEALTH AND SAFETY CODE ' 433.003(11).

**10.4.** Section 433.003 of the TEXAS HEALTH AND SAFETY CODE allows the sale of properly labeled horsemeat in Texas, and prevails over the conflicting provisions of Chapter 149 of the TEXAS AGRICULTURE CODE, because ' 433.007(a) of the TEXAS HEALTH AND SAFETY CODE provides: A This chapter [433] prevails over any other law, including Chapter 431 (TEXAS FOOD, DRUG AND COSMETIC ACT), to the extent of any conflict.

**10.5.** Texas has other statutes regulating slaughtering horses. TEXAS AGRICULTURE CODE ' 148.002(a) requires a slaughter facility to register with the county clerk. A slaughterer must keep a record in a bound volume of all livestock purchased and slaughtered, with specific descriptions of the livestock, the identity of the seller and transporter and the date of delivery. A slaughterer must report this information to the county commissioner court. TEXAS AGRICULTURE CODE ' ' 148.012, 148.012(c), and 148.012(d). Texas legislative requirements for reporting and paying fees reasonably would lead one to conclude Chapter 149 has been repealed. If, as the Attorney General concludes,

Chapter 149 is enforceable, then Texas law is so inconsistent and ambiguous as to be void, and any prosecution would violate due process. The Opinion of the Attorney General, recommends the use of the statutorily required reportings as evidence to be used in criminal prosecutions under Chapter 149. The Fifth Amendment prohibition against self incrimination is violated when a government requires registration and reports of activities and prosecution are based on coerced filings. The privilege requires the exclusion of such evidence in any prosecution.

### **11. First Amendment**

**11.1.** The purpose of Texas Legislature sought to accomplish in 1949, when it passed what is now Chapter 149, is not reflected in any of the filings submitted to the Attorney General. The legislature apparently decided that those sources of meat not normally consumed by humans should be forbidden, and singled out horsemeat in particular..

**11.2.** Based on the submissions to the Attorney General, those who seek enforcement against Plaintiffs of Chapter 149 appear to fall into two groups. The first group consists of those who view horses like pets, to whom the thought of eating horsemeat is repugnant. The second group consists of those whose feelings of revulsion at the slaughter of animals covers a broader range of animals, what some call animal rights advocates. The personal beliefs of those in both groups are entitled to respectful review and civil tolerance.

**11.3.** When the personal moral convictions of a vocal segment of the community are elevated to a status where those who disagree are legislated into criminality, First Amendment concerns about establishment of religion and freedom of belief are implicated. Personal, moral, or religious attitudes about what should or should not be eaten trace back through the centuries, have too often been embodied in laws, and have been the cause of bloody religious conflicts. The Old Testament

contains prescriptions about food. Jews avoid shellfish. Muslims and Jews abhor pork. Hindus hold cows sacred, and, in India, cows may be protected by law. Some people in the United States believe the human consumption of horsemeat to be immoral, or the consumption of any meat to be immoral. When personal moral beliefs, often held with religious conviction, are imposed on others by using the criminal law, heightened scrutiny is called for under the First Amendment. Chapter 149, if enforced today, would be repugnant to the goals embodied in the First Amendment - to foster tolerance of others views, and permit diversity among a populace of varying tastes, beliefs, and sensibilities.

Plaintiffs request this Court declare Chapter 149 unenforceable, and enjoin Defendants from prosecuting under it.

Respectfully submitted,

---

David Broiles  
State Bar No. 03054500  
1619 Pennsylvania Avenue  
Fort Worth, Texas 76104  
(817) 335-3311  
(817) 335-7733 fax

Of Counsel:

John Lineburger  
State Bar No. 12387500  
Fort Worth Club Tower  
777 Taylor, Penthouse I-C  
Fort Worth, Texas 76102-4196

Loe Warren Rosenfield  
Kaiteer & Hibbs, P.C.  
4420 West Vickery Blvd.  
Fort Worth, Texas 76185  
(817) 377-0060

