

No. 10-224

**In the
Supreme Court of the United States**

NATIONAL MEAT ASSOCIATION,
PETITIONER,

v.

KAMALA D. HARRIS, ET AL.,
RESPONDENTS.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF FOR THE STATES OF ILLINOIS,
ALASKA, ARIZONA, HAWAII, INDIANA,
MICHIGAN, NEVADA, NEW YORK,
OKLAHOMA, VERMONT, WASHINGTON,
WEST VIRGINIA, AND WYOMING AND THE
DISTRICT OF COLUMBIA AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENTS**

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INTEREST OF THE *AMICI CURIAE*

For States, this case has potential implications far beyond a narrow question of statutory interpretation. Petitioners and their amici have mounted an attack not only on the California law at issue here but also, more generally, against the “presumption against preemption,” which requires Congress to speak clearly prior to interfering with States’ authority to regulate conduct within their borders. States have a profound interest in this Court’s continued adherence to its long-held presumption against preempting state law and, correspondingly, States’ continued ability to exercise their police powers to regulate for the public health and safety.

INTRODUCTION AND SUMMARY OF ARGUMENT

In its decision below, the Ninth Circuit began its analysis of the Federal Meat Inspection Act (“FMIA”) with the longstanding presumption that, absent a clear statement to the contrary, Congress did not intend to supercede state law in an arena States have historically regulated. See Pet. App. 7a (“there’s a strong presumption against preemption, especially when the state law deals with matters like health and animal welfare, which have historically been regulated by states”). Relying on this presumption against preemption, see Pet. App. 8a (“Consistent with the presumption against preemption, we must give [the FMIA preemption] provision a narrow interpretation.”), the court below held that the FMIA does not expressly preempt a California law banning the receipt and

slaughter for human consumption of nonambulatory, “downer” animals at in-state slaughterhouses, including federally regulated slaughterhouses, see Pet. App. 8a-11a.

As the Ninth Circuit explained, the FMIA’s preemption clause precludes “state regulation of the ‘premises, facilities and operations’ of slaughterhouses,” Pet. App. 9a (quoting 21 U.S.C. § 678), “expressly limit[ing] states in their ability to govern meat inspection and labeling requirements,” *ibid.* (internal quotations omitted). But the FMIA also “explicitly preserves for the states broad authority to regulate * * * ‘other matters’” pertaining to slaughterhouses, Pet. App. 8a-9a (quoting 21 U.S.C. § 678). In particular, the FMIA “doesn’t preclude states from banning the slaughter of certain kinds of animals altogether,” decisions that “call[] for a host of practical, moral and public health judgments that go far beyond those made in the FMIA.” Pet. App. 9a, 10a.*

Respondents’ briefs explain in detail why the Ninth Circuit’s decision rejecting federal preemption was correct, and the State amici will not duplicate these arguments. This brief focuses instead on the more broadly applicable aspect of the decision below—whether the Ninth Circuit properly invoked the presumption against preemption. For while petitioner

* The Ninth Circuit also rejected petitioners’ argument that the FMIA *impliedly* preempted California’s ban on the receipt and slaughter of nonambulatory animals for human consumption. See Pet. App. 11a-15a. Petitioners do not challenge this holding.

suggests that this case may be resolved without resort to the presumption because Congress' intent to preempt is clear from the FMIA's "plain terms," Pet. Br. 53, this Court may conclude that the statute's wording alone does not resolve the preemption question, as even petitioner acknowledges elsewhere in its brief, see Pet. Br. 54-55 (recognizing possible "ambiguity" in FMIA requiring resort to legislative history).

In fact, the U.S. Chamber of Commerce, as an amicus supporting petitioner, devotes its brief to the argument that this Court should jettison the presumption against preemption in express preemption cases. See Brief of the Chamber of Commerce of the United States of America 10 ("Chamber Br.") (urging Court to "conclud[e] that the presumption against preemption has no application in the express preemption context"). Petitioner set the stage for the Chamber's argument by challenging the presumption's continued vitality in its questions presented. Pet. i-ii. This brief is the State amici's response to the attack on the Court's longstanding and recently reaffirmed reliance on the presumption against preemption even where, as here, the federal statute includes an express preemption clause.

At the outset, the Court's recent cases do not call the presumption's continued applicability in this context into question. Rather, the Court has consistently reaffirmed that the presumption is one of a class of interpretative canons (including the rule requiring an unambiguous statement of intent to abrogate state sovereign immunity and the doctrine of constitutional avoidance) requiring Congress to speak

clearly before upsetting the federal-state balance. Consistent with the Framers' vision, the presumption protects state sovereignty by forcing Congress to alert States that their interests are threatened, thereby allowing States to protect themselves through the democratic process. The existence of an express preemption clause does nothing to change that analysis, to the extent the clause is ambiguous either alone or where combined with "savings" language that protects areas of state action.

There is thus no reason for the Court to depart from its long-held presumption against the preemption of state law. And the Court should apply the presumption here, for animal welfare is an arena States traditionally have occupied, having regulated against animal cruelty longer and more comprehensively than the federal government.

ARGUMENT

1.a. For more than a half-century, the Court has applied a presumption against federal preemption of state law. The Court has explained:

because the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. In all pre-emption cases, and particularly in those in which Congress has "legislated * * * in a field which the States have traditionally occupied," * * * we "start with the assumption that the historic police powers of the States were not to be

superseded by the Federal Act unless that was the clear and manifest purposes of Congress.”

Medtronic v. Lohr, 518 U.S. 470, 485 (1996) (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)) (initial omission in original). Less than three years ago, in *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), the Court reaffirmed the presumption’s applicability where, as here, the federal statute includes an express preemption clause. See *id.* at 77 (“When addressing questions of express * * * pre-emption, we begin our analysis with the [presumption against preemption]”) (internal quotations omitted).

b. To be sure, in cases decided since *Altria*, the Court has not always invoked the presumption when resolving issues of express preemption. Contrary to the Chamber’s suggestion, however, see Chamber Br. 8-10, 15, the Court’s silence in those cases does not cast doubt on the presumption’s continued vitality. In *Cuomo v. Clearinghouse Association, LLC*, 129 S. Ct. 2710 (2009), “the plain terms of the [federal] Act” made it “unnecessary” for the Court to rely on the presumption in rejecting preemption, though the Court recognized “the incursion that the [federal] regulation ma[d]e upon traditional state powers.” *Id.* at 2720. The presumption was equally unnecessary to resolve the express preemption question in *Chamber of Commerce v. Whiting*, 131 S. Ct. 1968 (2011), for the arguably preempted state law there fell within “the plain text” of the federal statute’s savings clause. *Id.* at 1980. And as for *Bruesewitz v. Wyeth*, 131 S. Ct. 1068 (2011), on which the Chamber also relies, see Chamber Br. 9-10, “the only interpretation” that was “supported by the

text and structure” of the federal act in that case required preemption, *Bruesewitz*, 131 S. Ct. at 1081; accordingly, the presumption had no role to play.

Nor does *PLIVA, Inc. v. Mensing*, 131 S. Ct. 2567 (2011), call the presumption into question. Although the four-Justice plurality suggested that “courts should not strain to find ways to reconcile federal law with seemingly conflicting state law” (at least on questions of implied conflict preemption, like the one presented there), *id.* at 2580, this suggestion failed to attract a majority; Justice Kennedy (who provided the fifth vote favoring federal preemption) did not join that portion of the plurality’s opinion. And the four dissenting Justices would have held that the presumption applies “[i]n all pre-emption cases, and particularly in those in which Congress has legislated * * * in a field which the States have traditionally occupied.” *Id.* at 2586 (Sotomayor, *J.*, dissenting) (quoting *Wyeth v. Levine*, 129 S. Ct. 1187, 1194 (2009)) (brackets and omission in original).

2. Thus, there is nothing about the presumption requiring this Court’s clarification, contrary to the argument in the certiorari petition. See Pet. 27-31. Although petitioner has since backed away from this suggestion (arguing in its merits brief that this case should be decided without considering the presumption’s applicability, see Pet. Br. 52-54), the Chamber urges the Court to overturn its prior decisions recognizing and reaffirming the presumption. See Chamber Br. 8-22. The Court should decline this invitation. The presumption against preemption belongs to a class of interpretative rules that require legislatures to speak clearly when reaching disfavored

results. These canons of construction promote the rule of law and encourage political accountability. The Court should not abandon either these values or the presumption against preemption that advances them.

“In traditionally sensitive areas, such as legislation affecting the federal balance, the requirement of clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.” *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 65 (1989) (quoting *United States v. Bass*, 404 U.S. 336, 349 (1971)). Such “clear statement” rules promote both compliance and the rule of law, by putting affected parties on notice of their obligations and limiting the enforcement discretion of government officials. These rules also foster careful legislative deliberation and reduce the risk that individual lawmakers will promote parochial interests. Finally, the rules encourage political accountability, offering parties an opportunity to express their objections through the democratic process and forcing legislators to pay a price for unpopular decisions. See generally Cass R. Sunstein, *Nondelegation Canons*, 67 U. Chi. L. Rev. 315, 319-321 (2000). Consistent with these goals, the Court has not hesitated to require an unambiguous statement of legislative intent when Congress enacts laws that purport to affect the federal-state balance.

a. Thus, Congress must speak “expressly and unequivocally” when it abrogates the States’ immunity to suit in federal court, *Sossamon v. Texas*, 131 S. Ct. 1651, 1661 (2011), or state court, see *Will*, 491 U.S. at 65. The Court refuses to assume without a clear

statement that Congress has “alter[ed] the usual constitutional balance between the States and the Federal government,” *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 543 (2002) (quoting *Will*, 491 U.S. at 65), or interfered with the “substantial sovereign powers” the States retain “under our constitutional scheme,” *id.* at 544 (quoting *Gregory v. Ashcroft*, 501 U.S. 452, 461 (1991)). This mandate “ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter” and provides “notice to the States” of Congress’ intended abrogation, affording States the opportunity to oppose abrogating legislation before it becomes law. *Sossamon*, 131 S. Ct. at 1661.

b. The doctrine of constitutional avoidance similarly requires Congress to provide the “clearest indication” of its intent “to infringe constitutionally protected liberties or usurp power constitutionally forbidden to it.” *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575, 577 (1988) (internal quotations omitted). And the Court has pressed this rule into service to protect state prerogatives. In *Jones v. United States*, 529 U.S. 848 (2000), for example, the Court construed the federal arson statute narrowly, so that it did not cover the arson of an owner-occupied private residence, “to avoid the constitutional question that would arise” under the Commerce Clause were the provision “read to make virtually every arson in the country a federal offense.” *Id.* at 857-859. The Court explained that Congress would “not be deemed to have significantly changed the federal-state balance in the prosecution of crimes”

without a clear statement to that effect. *Id.* at 858 (internal quotations omitted); see also *Bass*, 404 U.S. at 349 (narrowly interpreting federal statute prohibiting felons from possessing firearms because, absent clear statement from Congress, Court “would not * * * assume that Congress has meant to effect a significant change in the sensitive relation between federal and state criminal jurisdiction”).

In short, the Court routinely applies clear statement rules and other interpretative canons to require Congress to deliberate carefully before legislating in the “traditionally sensitive area” of federal-state relations, and to give States fair notice of such legislation. These rules advance the interests at the core of our federalist system, and there is no more reason to abandon the presumption against preemption than any other rule requiring Congress to make its intent plain.

3. “Dual sovereignty is a defining feature of our Nation’s constitutional blueprint.” *Sossamon*, 131 S. Ct. at 1657 (quoting *Fed’l Maritime Comm’n v. S.C. Ports Auth.*, 535 U.S. 743, 751 (2002)); accord *Printz v. United States*, 521 U.S. 898, 920 (1997) (“our citizens * * * have two political capacities, one state and one federal, each protected from incursion by the other”) (quoting *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, *J.*, concurring)). By requiring Congress to speak clearly before displacing state law, the presumption against preemption preserves the “numerous advantages” of our “federalist structure,” while honoring the limitations that the Supremacy Clause imposes on state authority. *Gregory*, 501 U.S. 458.

a. The presumption rests on “respect for the States as ‘independent sovereigns in our federal system.’” *Wyeth*, 129 S. Ct. at 1195 n.3 (quoting *Lohr*, 518 U.S. at 485). In *Geier v. American Honda Motor Co., Inc.*, 529 U.S. 861 (2000), four Justices explained the presumption as follows: it “place[s] * * * the power of pre-emption squarely in the hands of Congress, which is” best “suited * * * to strike the appropriate state/federal balance.” *Id.* at 907 (Stevens, *J.*, joined by Justices Souter, Thomas, and Ginsburg, dissenting). The presumption thus builds upon James Madison’s prediction that Congress, because it is comprised of members from each State, would “be disinclined to invade the rights of the individual States, or the prerogatives of their governments.” *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528, 551 (1985) (quoting *The Federalist*, No. 46, p. 332 (B. Wright ed., 1961)). And the presumption “provides assurance that ‘the federal-state balance’ * * * will not be disturbed unintentionally by Congress or unnecessarily by the courts.” *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977) (quoting *Bass*, 404 U.S. at 349).

b. The presumption also guarantees the continued “effectiveness of the federal political process in preserving the States’ interests.” *Garcia*, 469 U.S. at 551. A clear statement of a bill’s preemptive scope notifies States that their interests are threatened, thereby allowing States to protect themselves through the democratic process. States may voice their concerns to legislators in the run-up to a law’s enactment, and legislators are subject to retribution from voters following the law’s passage. This allows “the structural

safeguards inherent in the normal operation of the legislative process [to] operate to defend state interests from undue infringement.” *Geier*, 529 U.S. at 907 (Stevens, *J.*, dissenting). “[T]o give the state-displacing weight of federal law to mere congressional *ambiguity* would evade the very procedure for lawmaking on which *Garcia* relied to protect states’ interests.” *Gregory*, 501 U.S. at 464 (quoting L. Tribe, *American Constitutional Law* § 6-25, p. 480 (2d ed. 1988)) (brackets and emphasis in original).

In this respect, the expansion of Congress’ powers under the Commerce Clause since the 1930s, which dramatically contracted the areas of exclusive state authority, makes the presumption all the more important. The Court developed the presumption at the same time that it gave Congress broader Commerce Clause authority, and the initial purpose of the presumption appears to have been to protect some measure of state authority in light of Congress’ newly recognized powers. See Stephen A. Gardbaum, *The Nature of Preemption*, 79 *Cornell L. Rev.* 767, 806 (1994). While congressional power under the Commerce Clause is not unlimited, see, *e.g.*, *United States v. Lopez*, 514 U.S. 549 (1995), Congress now regulates virtually every sector of the American economy and myriad non-economic matters as well. States may retain a vibrant role as independent sovereigns only by convincing Congress to limit the preemptive force of federal law. But States have no opportunity to protect “the prerogatives of their governments” if the bill under consideration does not clearly preempt state law.

4. Because the presumption against preemption serves the same rule-of-law and political-accountability values as the Court's other sovereignty-protecting rules, the Chamber is wrong to suggest that the presumption "mesh[es] at best uneasily" with these rules. Chamber Br. 20-21 & n.11.

a. At the outset, the Chamber's view is impossible to reconcile with cases holding that the rule requiring a clear statement of congressional intent to abrogate state sovereign immunity "applie[s] in other contexts," including to questions of federal preemption. *Gregory*, 501 U.S. at 460-461 (quoting *Will*, 491 U.S. at 65). As this Court has recognized, a federal statute purporting to preempt state law touches on "traditionally sensitive areas" and "affect[s] the federal balance" no less than federal abrogation of state immunity. *Id.* at 461 (quoting *Will*, 491 U.S. at 65). Similarly, although *Jones v. United States* was not formally a preemption case, Justice Stevens' concurring opinion (joined by Justice Thomas) "emphasize[d] the kinship between our well-established presumption against federal pre-emption of state law * * * and our reluctance to believe Congress intended to authorize federal intervention in local law enforcement in a marginal case such as this." 529 U.S. at 859 (internal quotations and citations omitted).

b. Next, the Chamber turns federalism on its head, arguing that the Supremacy Clause "points in *favor* of, not *against*, preemption." Chamber Br. 20 (emphasis in original). This misses the point. There is no dispute that valid federal legislation has the power to trump state law, or that an express preemption clause shows

congressional intent to displace *some* state law. But when Congress fails to speak unambiguously in an express preemption clause, there is a question as to the scope of the law's intended preemptive effect, *i.e.*, over the extent to which Congress meant to "impose its will on the States." *Gregory*, 501 U.S. at 460. This is where the presumption comes into play. Because the authority to preempt state law "is an extraordinary power in a federalist system," "we must assume Congress does not exercise [it] lightly." *Ibid.*; accord *Wyeth*, 129 S. Ct. at 1205 (Thomas, *J.*, concurring in the judgment). The Chamber's view that "there is nothing extraordinary or concerning about express preemption," Chamber Br. 21, falls flat.

c. The Chamber also suggests that Congress is not up to the task of making its preemptive intent clear. See Chamber Br. 21-22 (expressing concern that "Congress would be required to * * * anticipate every area of potential overlap between the federal and state regulatory regimes"). But Congress is understood to account for traditional tools of statutory interpretation. This Court does not hesitate to "assume," for example, "that Congress legislates against the backdrop of the presumption against extraterritoriality," which requires a clear statement of congressional intent that a federal law apply beyond U.S. borders. *Arabian Am. Oil Co. v. EEOC*, 499 U.S. 244, 248 (1991). The Court can similarly assume that Congress knows well how to preempt state law. So, too, if a majority in Congress concludes that a court has underestimated the scope of its preemptive intent, Congress may respond with new legislation. See generally *John R. Sand & Gravel Co. v.*

United States, 552 U.S. 130, 139 (2008) (“*stare decisis* in respect to statutory interpretation has ‘special force,’ for ‘Congress remains free to alter what we have done’”) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 172-173 (1989)). It is then, when Congress makes the broader scope of its intended preemption clear, that States will have the chance to object by opposing the new legislation, rather than being blind-sided by an expansive construction of the original, ambiguous preemption language.

d. Nor is there anything to amici’s suggestion that the very existence of implied preemption means there cannot be a live presumption against preemption. See Chamber Br. 21 n.12. To the extent that the implied preemption doctrine encourages courts to displace state law without any clear congressional intent to do so, the doctrine should be limited (or abandoned), as several of the Court’s members have suggested. In *Whiting*, for example, the four-Justice plurality agreed that because “obstacle” preemption (a form of implied preemption) threatens to produce a “freewheeling judicial inquiry into whether a state statute is in tension with federal objectives” and “undercut the principle that it is Congress rather than the courts that preempts state law,” “a high threshold must be met if a state law is to be pre-empted for conflicting with the purposes of the federal Act.” 130 S. Ct. at 1985 (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 110-111 (1992) (Kennedy, *J.*, concurring in part and concurring in the judgment)); see also *Wyeth*, 129 S. Ct. at 1217 (Thomas, *J.*, concurring in the judgment) (suggesting that obstacle preemption should be abandoned entirely).

And, in any event, an overly broad use of implied preemption is no reason to do away with the presumption against preemption.

5. Finally, there is no merit to the Chamber’s claim that, whatever the presumption’s role in implied preemption cases, it has no work to do when there is an express preemption clause. See Chamber Br. 12 (presumption should “dissolve[]” in face of express preemption provision). Of course, an express preemption provision *is* a clear statement of Congress’ intent to preempt. But even when Congress includes an express preemption clause in a statute, the clause may be ambiguous or appear to be contradicted by broad “savings” language that protects areas of state action.

For example, the FMIA qualifies its preemption provision by explicitly preserving broad authority for States to regulate slaughterhouses. See 21 U.S.C. § 678 (States “not preclude[d] * * * from making requirement or taking other action, consistent with this chapter, with respect to any other matters regulated under this chapter”). Similar statutory schemes—combining an express preemption clause with a savings provision—appear in a variety of laws addressing matters important to States, including their citizens’ health and safety, see, *e.g.*, *Williamson v. Mazda Motor of America, Inc.*, 131 S. Ct. 1131, 1135 (2011) (discussing National Traffic and Motor Vehicle Safety Act); *Sprietsma v. Mercury Marine*, 537 U.S. 51, 63 (2002) (addressing Federal Boat Safety Act); illegal immigration, see, *e.g.*, *Whiting*, 131 S. Ct. at 1977 (discussing Immigration Reform and Control Act); environmental protection, see, *e.g.*, *Bates v. Dow*

Agrosciences LLC, 544 U.S. 431, 439 (2005) (discussing Federal Insecticide, Fungicide, and Rodenticide Act); and benefits regulation, see *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 364 (2002) (discussing Employee Retirement Income Security Act (ERISA)).

Thus, the Court recognized that even when there is an express preemption provision, that “does not immediately end the inquiry because the question of the substance and scope of Congress’ displacement of state law still remains.” *Altria*, 555 U.S. at 76. Justice Scalia’s assessment of ERISA’s preemption clause provides a compelling example. That clause purports to preempt “any and all State laws insofar as they may now or hereafter relate to any employee benefit plan” governed by ERISA. 29 U.S.C. § 1144(a). However,

applying the “relate to” provision according to its terms [is] a project doomed to failure, since, as many a curbstone philosopher has observed, everything is related to everything else. * * *
The statutory text provides an illusory test, unless the Court is willing to decree a degree of pre-emption that no sensible person could have intended—which it is not.

Cal. Div. of Labor Standards Enforcement v. Dillingham Constr., N.A., 519 U.S. 316, 335-336 (1997) (Scalia, J., concurring).

Because even an express preemption clause may not clearly indicate “the *scope* of [Congress’] intended invalidation of state law,” this Court has rejected the Chamber’s argument that the presumption “should apply only to the question whether Congress intended

any pre-emption at all.” *Lohr*, 518 U.S. at 485 (emphasis in original). And this argument would prove too much, in any event. This Court has applied clear statement rules and other interpretative canons precisely where, as here, Congress has addressed an issue, but the scope of its legislation is unclear. See *supra* pp. 9-10; see also *Scheidler v. Nat’l Org. for Women*, 537 U.S. 393, 409 (2003) (under rule of lenity, courts may choose “harsher” of “two rational readings of a criminal statute” “only when Congress has spoken in clear and definite language”) (internal quotations omitted).

Nor, as the Chamber suggests, see Chamber Br. 10-11, does the presumption “conflict[]” with the requirement that the congressional purpose reflected in an express preemption clause’s plain wording be the “touchstone” of any preemption inquiry. The presumption is triggered only “when the text of a pre-emption clause is susceptible of more than one plausible reading,” *Altria*, 555 U.S. at 77, that is, when Congress has failed to make the scope of its preemptive intent clear. The Chamber’s argument that the presumption “aggrandizes the judicial branch” at the expense of the legislative (purportedly by disfavoring preemption in the face of “concrete indicia” of Congress’ intent), Chamber Br. 19, thus assumes its conclusion. The presumption is fully consistent with traditional interpretative tools.

6. Having established that the Court should reject the Chamber’s invitation to jettison the presumption against preemption, the Court should apply the presumption here, assuming the Court concludes that

the FMIA's preemption clause is susceptible of more than one plausible construction. The presumption is "particularly" applicable to cases where "Congress has 'legislated * * * in a field which the States have traditionally occupied.'" *Lohr*, 518 U.S. at 485 (quoting *Rice*, 331 U.S. at 230) (omission in original); accord *Wyeth*, 129 S. Ct. at 1194-1195. This "approach is consistent with both federalism concerns and the historic primacy of state regulation of matters of health and safety." *Lohr*, 518 U.S. at 485. States have prohibited animal cruelty, including by requiring humane slaughter, longer and more comprehensively than the federal government. The protection of animal welfare thus is a prototypical illustration of "a field which the States have traditionally occupied."

States began legislating against animal cruelty long before Congress. In 1829, New York enacted legislation protecting animals from "malic[ious] kill[ing], maim[ing], or wound[ing]." N.Y. Rev. Stat. tit. 6, §26 (1829). Within a few decades of the New York law, States throughout the Midwest and Northeast followed suit with their own anti-cruelty provisions. See, e.g., 1821 Me. Laws 5; Mass. Gen. Laws, ch. 96, §§ 1-2 (1859); Mich. Rev. Stat. ch. 8, § 22 (1838); N.H. Rev. Stat. ch. 219, § 12 (1843); Tenn. Code Ann. §§ 1668-1672 (1858); 1854 Vt. Acts & Resolves 51.1; see generally Randall Lockwood, Animal Cruelty Prosecution (Am. Prosecutors Research Inst. 2006) 5-8, available at http://www.ndaa.org/pdf/animal_cruelty_06.pdf (tracing history of animal cruelty laws in United States).

In contrast, no federal law governed the humane treatment of animals until 1873, nearly fifty years after the States began legislating in this area. See Twenty-Eight Hour Law, 49 U.S.C. § 80502 (1873) (amended 1994). And this first federal law was quite limited, protecting only livestock traveling across state lines during journeys lasting more than 28 hours. See *ibid.* The federal government did not get involved in legislating humane methods of slaughter until 1958, more than a century after States began passing their own anti-cruelty laws. See Humane Methods of Slaughter Act of 1958, 7 U.S.C. §§ 1901 *et seq.*

State animal cruelty regulation is also more comprehensive. Every State has anti-cruelty laws. See Anti-Cruelty: Related Statutes, Michigan State Univ. Coll. of Law: Animal Legal & Historical Ctr., available at <http://www.animallaw.info/statutes/topicstatutes/sttoac.htm>. In addition, 21 States have laws requiring the humane slaughter of animals. See Table of State Humane Slaughter Laws, Michigan State Univ. Coll. of Law: Animal Legal & Historical Ctr., available at <http://www.animallaw.info/articles/ovusstatehumaneslaughtertable.htm> (citing laws of Arizona, California, Colorado, Florida, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and West Virginia). States with humane slaughter laws govern more than half of the livestock slaughtered in the United States today. See Livestock Slaughter 2010 Summary 11 (USDA Nat'l Agric. Statistics Serv. Apr. 2011), available at <http://usda.mannlib.cornell.edu/usda/>

nass/LiveSlauSu//2010s/2011/LiveSlauSu-04-25-2011.pdf.

States also have gone further than the federal government in regulating the kinds of animals that are suitable for human consumption, such as by prohibiting the slaughter of horses, cats, and dogs. See Cal. Penal Code §§ 598b-598c (West 2011); Del. Code. Ann. tit. 11, § 1325A (West 2011); Ga. Code Ann. § 26-2-160 (West 2011); 225 Ill. Comp. Stat. 635/1-1.5 (2010); Miss. Code Ann. §§ 75-33-3, 97-27-19 (West 2011); N.J. Stat. Ann. § 4:22-25.4 (West 2011); N.Y. Agric. & Mkts. Law §§ 96-d, 96-e (McKinney's 2011); Okla. Stat. Ann. tit. 63, §§1-1135-1139 (West 2011); Tex. Agric. Code Ann. § 149.001-007 (West 2011). In short, because the California law at issue is one of a long line of state laws protecting animals from inhumane treatment, including by banning the slaughter of certain types of animals altogether, this case is “particularly” well suited for application of the presumption against preemption.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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