Federal Courts Continue to Pave Way for Congress’ Authority to Ban Animal Fighting

By Thomas Yoon

A key portion of the Animal Welfare Act (AWA) has weathered multiple legal challenges from cockfighters and dogfighters who argued that the federal government lacks the authority to restrict animal fighting. Each of the five amendments to Section 26 of the AWA (relating to “animal fighting ventures”) from 2002 to 2018 triggered legal maneuvers by cockfighting enthusiasts intent on continuing their illegal enterprises. Many of the lawsuits had common arguments, challenging Congress’s authority to enact animal fighting bans and alleging infringement of constitutional rights.

One of the most common legal claims against the AWA’s animal fighting ban is a federalism argument under the Commerce Clause, which posits that Congress does not have jurisdiction to ban animal fighting because it is an intrastate activity that does not affect interstate commerce. This argument, however, has been repeatedly rejected by the courts, including the U.S. Court of Appeals for the Fourth Circuit in the seminal animal fighting cases U.S. v. Gibert and U.S. v. Lawson. The Fourth Circuit had “no difficulty concluding that Congress acted within the limitations established by the Commerce Clause in enacting the animal fighting statute.” The court’s conclusion was fortified by the Congressional findings showing the national economic impact of animal fighting and the direct link between animal fighting ventures and its effect on interstate commerce. With these two important decisions, the cockfighting community will have a difficult case if it wishes to prevail on arguments predicated from the Commerce Clause.

Just recently at the U.S. District Court for the District of Puerto Rico, Judge Gustavo Gelpi granted summary judgement to the United States and ruled against the claims made by a cockfighting coalition challenging Congress’ constitutional authority under the Commerce Clause to extend its ban on cockfighting to the U.S. territories. Judge Gelpi declared in his order that “[n]either the Commonwealth’s political statutes, nor the Territorial Clause, impede the United States Government from enacting laws that apply to all citizens of this Nation alike, whether as a state or territory.” Several district courts have held similarly regarding Congress’ authority under the Commerce Clause. The U.S. District Court for the Western District of Texas held that Congress is acting within the limits of the Commerce Clause by enacting law restricting animal fighting. The U.S. Court of Appeals for the Eighth Circuit affirmed a district court’s ruling that the appellant’s Commerce Clause challenge fails because the AWA specifically

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2 Gibert, 677 F.3d 613, 624 (4th Cir. 2012).
3 Id. at 625-27 (“…animal fighting ventures are inherently commercial enterprises that often involve substantial interstate activity”).
5 U.S. v. Thompson, 118 F.Supp.2d 723, 726 (W.D. Tex. 1998) (“There is evidence that the people involved in animal fighting use the channels of interstate commerce. They publish and distribute magazines and other periodicals that are shipped across state lines. The Court assumes that they use telephones to inform each other of the time and dates and location of animal fighting activities. Animals are transported across state lines for breeding and fighting. People travel across state lines to transport the animals, to referee the matches, to gamble on the matches, or simply to view the animals.”).
covers only the interstate and foreign movement of birds. The U.S. District Court for the Southern District of Illinois found the criminal defendant’s argument that Congress lacks authority under the Commerce Clause meritless.

Another argument brandished by animal fighters against Section 26 of the AWA is grounded on individual constitutional rights. In the case in Puerto Rico, the cockfighting coalition claims that the cockfighting ban has robbed them of First Amendment rights to freedom of expression, because Puerto Ricans perpetuate their culture through assembly and cockfighting. The court disagrees. The court does not recognize that a live-bird fighting venture is an expressive or non-expressive protected conduct. Even if it is an expressive conduct, the court states, “expressive activities that produce special harms distinct from their communicative impact are not entitled to constitutional protection.” Further, the court recognizes the “distinction between an artistic expression, such as depicting a wounded or dead animal, from a non-artistic conduct, i.e. participating in animal fights that may lead to injury or death of participating animals.” Moreover, the animal fighting ban does not prohibit cockfighting enthusiasts from assembling to discuss and express their views regarding cockfighting and other cultural issues; although, the First Amendment does not protect assembly for unlawful purposes or to engage in criminal activity.

Animal fighting has often been intertwined with other forms of organized crime – whether it be gambling or bribery to keep the local authorities from enforcing the law. In U.S. v. Thompson, the court finds persuasive the evidence that “local authorities were participating in the animal fighting activities and were thwarting law enforcement.” The court elaborates to resolve the defendant’s Tenth Amendment claim that the federal government should defer to the states with regard to the regulation of animal fighting because that’s a law enforcement matter left primarily to them. The court states, “[w]hile one or more corrupt members of law enforcement do not vitiate the Tenth Amendment, it is a powerful buttress to the argument that the federal government may also have a legitimate interest in regulating criminal activity that has traditionally been regulated by state governments. This is especially true because, absent a specific constitutional prohibition, states are certainly free to ask the federal government for assistance in regulating activities such as animal fighting.” The court implies additional regulation by the federal government only helps the proper enforcement of the laws barring specific constitutional prohibitions.

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6 Slavin v. U.S., 403 F.3d 522 (8th Cir. 2005).
9 Id.
10 Id. at 24-25.
11 Id. at 25.
13 Id.
14 Id.