IN THE UNITED STATES DISTRICT COURT
FOR THE 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.	§	CIVIL ACTION NO. 4-02-CV-0804-A
TIM CURRY, District Attorney, Tarrant County, Texas, et al Defendants	§	

DEFENDANT CURRY'S BRIEF IN REPLY TO PLAINTIFFS' RESPONSE TO MOTION FOR SUMMARY JUDGMENT

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL REGULATIONS

STATE STATUTES

DOCKETED CASES

OTHER SOURCES

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TO THE HONORABLE TERRY MEANS, UNITED STATES DISTRICT JUDGE:

Defendant Tim Curry re-urges his previous briefing, adding the following by way of Reply to Plaintiffs' Response:

1. Civil Rights Activists Did Not March So That Plaintiffs Could Slaughter Horses.

Reading through Plaintiffs' Response, one would not learn much new about the applicable law in this case. Rather, the reader would learn of Plaintiffs' counsel's laudable history in the 1960's fight for civil rights on behalf of Americans of African descent and would be reminded of what no reasonable person doubts: slavery was a terrible institution that cast a shameful shadow on the history of this Country. The reader would feel the justified anger expressed by Plaintiffs' counsel at slavery's stain on our Country's history – one can imagine counsel's booming crescendo as one reads – and at yesteryears' laws [and even some of today's practices] that failed [and sometimes still miserably fail] to protect people of African descent and

others.[1] The reader would see Plaintiffs' recitation that "the founding fathers considered those of African descent so low on the scale of living creatures that they were ranked little higher than horses." Plaintiffs' Response to Defendant's Motion for Summary Judgment ["P's Resp."], pp. 1-2. The reader would vicariously march the streets alongside Plaintiffs' counsel, marshalling strength and resolve to fight with and for those who have been badly treated [or worse] because of their race or other status. One might even think that the Plaintiffs in this case are some sort of heroes of the oppressed, true champions of racial justice.[2] And then, one would realize, with probable horror, that the goal of Plaintiffs' stirring justice argument is not to take up for people whose rights are being oppressed. Rather, Plaintiffs' goal here in invoking civil rights heroes is to get the stamp of approval to slaughter thousands of horses for people to eat. Plaintiffs' arguments about the great injustice of past statutes perversely attempting to justify racial oppression are not merely odd bedfellows with Plaintiffs' next-breath exhortation that they have a Federal right to slaughter horses: the shocking incongruity between Plaintiffs' sound racial justice arguments against slavery and the shaky ground on which they argue their actual case and

[1] Defense counsel cannot match Plaintiffs' counsel's long history story for story and would not presume to try, but even she has stories to tell about such issues, having personally battled – and prevailed against – Ku Klux Klan members in administrative proceedings in the 1980's. Accordingly, counsel appreciates the great societal value of the work of opposing counsel on these important issues. People of conscience are still called upon to fight the type of battles of which Plaintiffs' counsel speaks. They cannot and should not rest, but they also should not slight genuine race and justice issues by attempting to inappropriately wrap completely unrelated issues, such as the Plaintiffs' perceived Federal 'right' to engage in commercial horse slaughter, in the same package as the fight for equal rights. This does the work of those who fought and fight so hard for justice and human progress great disservice.

[2] The racial justice discourse by the slaughterhouses is beyond high irony. Since Plaintiffs broach the subject, it is worth noting that a Plaintiff herein is currently embroiled in litigation in this very Court District in which it is alleged in publicly filed pleadings that such Plaintiff engaged in wrongful termination of an employee, self-described as a black male, "on the basis of cultural incompatibility", with allegations being made by the former employee that Plaintiff's representative stated that employee's "main problem" was that he doesn't "understand the European culture." The allegations include that the sued slaughterhouse's Livestock manager "light heartedly" "came in with a rope saying, 'Let's go hang ol' Fertnan up outside to show folk how we treat people that don't act right.'" Complaint of Frenanda L. James, part IV, pp. 4-5. *Frenanda L. James v. Beltex*, pending on the court's docket as Cause No. # 3:03-CV-00470, U.S. District Court, Northern District of Texas, Dallas Division, filed March 5, 2003.

the legal issues truly before this Honorable Court shears Plaintiffs' racial history argument from any rational application to this case. To suggest that any civil rights activist, Plaintiffs' esteemed and learned counsel included, ever risked all to march blood-soaked streets during the civil rights era so that Plaintiffs could slaughter horses is beyond credulity. If Plaintiffs truly believe that 1960's era civil rights activism was about their ability to commercially slaughter horses for human consumption, they have missed the point.

That others have used a federalism argument in ways that Plaintiffs and their counsel, and other champions of civil rights [and/or of horse slaughter], may find offensive does not obliterate the legal concept of States' Rights from the United States Constitution or from our jurisprudence. There is an entire body of issues that has nothing to do with the racial justice issue Plaintiffs recount but everything to do with federalism and State powers. The federalism argument, when properly applied to an issue involving legitimate State powers [but not when used to defend the obscenity of slavery], has strength and honor. Surely Plaintiffs would not criticize a State that moves ahead of the pack on social justice issues; States are not required to lag behind so they can all move forward in lock-step in their legal evolution, so long as they remain within constitutional constraints. But language matters; Defendant's counsel would not intentionally invoke language she knew to be inseparably cloaked, in Plaintiffs' minds [or that of their counsel or of anyone else], in offensive history. Defendant hereby reforms the focus of the State powers argument: Defendant presents a 'Recognition of Federalism' argument. Defendant's argument here is, as it has been throughout this litigation, most assuredly a federalism argument; it is not and has not been an appeal to the worst instincts of any who would attempt to justify the indefensible history of American slavery.

This Country is many things, including a delightfully diverse [albeit sometimes very

imperfect] group of States and human actors, not a centrally governed monolith that demands fifty look-alike McStates all of which conform to the preferences of the slaughterhouses. As with most legal doctrines, there are right and wrong applications of the Recognition of Federalism argument. Institutionalizing slavery and its lingering indicia is clearly a wrongful use of the Recognition of Federalism argument or of any reasonable legal argument. But, there is an entire world of legal issues out there: permitting States to protect and favor animals and to criminalize the possession of offensive substances that have no constitutionally protected characteristic – this is horsemeat, for Pete's sake – is a fine and proper use of the doctrine. Plaintiffs' assertion that they find the entire concept offensive across the board because of improper past use of the doctrine in the cause of evil does not wipe the argument from the law any more than the linkage between some of the world's great religions and terrible acts carried out in the misguided use of the name of those religions extinguishes the existence or value of religion.

Plaintiffs, P's Resp., p. 3, rail against the citation by Defendant of *Hughes v. Sup. Ct. of Calif. for Contra Consta County*, 339 U.S. 460 (1950) because of the deplorable facts underlying that lawsuit. Westlaw shows that case to be cited 504 times; the case is not narrowly limited to application in situations with the 1950 case facts Plaintiffs find so offensive. The principle of case law cited by Defendant – that States may enact laws as they see fit, unless they violate some Federal law in doing so – is not uniquely about civil rights or race, even if the case itself is not an example of inspiring or even acceptable facts. There are limitations on State powers, to be sure. But the limits are not as Plaintiffs assert. Plaintiffs attempt to stretch the concept of federally protected rights to every whim not explicitly federally prohibited, to require all States to have an identical minimalist penal philosophy – theirs – regarding what is or is not to be criminally prohibited. Plaintiffs' argument cannot find a home in the United States Constitution; the

argument cheapens the value of real Federal rights.

Plaintiffs acknowledge but skip lightly over *DeHart v. Town of Austin,* 39 F.3d 718, 723 (7th Cir. 1994). The case deserves more than that. It clearly shows that the Federal government can regulate animals and yet the States may ban acts involving those same animals even when those acts are not prohibited by the Federal regulations. That has a familiar ring: it is that case, not Plaintiffs' invocation of the civil rights marches of the 1960's, that most closely relates to the real issue in this lawsuit.

The 10th Amendment lives: but for real limitations in the law, States are free to enact their laws. States are free to have intelligent laws and silly laws and laws at every interval in between. States are even free to have laws that the slaughterhouses don't like. Imagine that. States are free to protect animals and to enshrine in their penal codes ways of expected living that inspire the best of humanity, including the protection of animals and respect of the bond between humans and their close companion animals. This is true whether those animals and humans engage in the reciprocal altruism of a classic human/canine-type pet relationship or not. States may decide that an ethic of care or a sense of propriety requires their protection or regulation of animals recognized as close to humans, and this ethic may be codified beyond merely prohibiting cruelty.

States need not draft the perfect law in order to draft an enforceable law. That Plaintiffs could draft a State statute that is more protective of horses if given quill and ink and inclination does not invalidate Chapter 149.[3] Perfect efficiency in addressing the evil to be remedied is not required of any law.

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[3] Plaintiffs attempt to crayfish away from their clear pleading that "as to horsemeat, the Legislature decided that healthy or not, people should not sell horsemeat to others because that was not the kind of meat 'normally used for human food'." Plaintiffs' Motion for Summary Judgment with Brief, pp. 4-5, para. 2.3. It's a little late for that attempted retreat.

Courts recognize limitations inherent in federalism. That concept is very relevant to this case. If the Federal law does not prohibit the States from deciding which animals may be commercially slaughtered for meat – and it does not – then Texas is free to have its horsemeat ban.

2. Still Missing in Action: Plaintiffs Cannot and Do Not Cite Specific Repeal or Preemption Provisions.

Plaintiffs' repeal and preemption arguments are finally distilled into their true essence: Plaintiffs see a big pile of horse and meat related laws and suggest that there must be a law in there somewhere that prohibits the Texas law because, gosh, it is such a big pile. Well, yes, it is.

The size of the pile is irrelevant. It is the nature of the pile that matters.

Defendant re-urges his previously-briefed arguments on repeal and preemption.

3. Plaintiffs' Dormant Commerce Clause Argument Cannot Stand.

Plaintiffs argue that if the purpose of the statute's continuation is health (it is not) then the analysis proceeds along preemption grounds but that if the purpose of the statute is criminalizing offensive conduct (it is) then Dormant Commerce Clause analysis controls because Chapter 149 "totally bans a commercial activity in interstate commerce". P's Resp., p. 4. Plaintiffs' persistence in casting this as a total ban of all horse and horse part commerce is contrary to the facts and to the law. Defendant has already responded to all of Plaintiffs' versions of the Dormant Commerce Clause argument. The Texas law applies equally and without distinction between all three Plaintiffs; there is no discrimination against foreign or interstate commerce. No one, domestic or foreign, has a free pass to avoid the requirements of Chapter 149 of the Texas Agriculture Code. Permitting interstate or international travelers *carte blanche* with regard to possession of prohibited substances is not the intent of Federal meat laws or of Plaintiffs'

favorite timber industry case.[4]

Plaintiffs cannot breathe life into their vision of a minimalist criminal legal system by their horse slaughter lawsuit. We can be thankful for that. Criminal defendants need not bother to line up to urge a preemption challenge against every State law that prohibits illegal commerce. Engaging in illegal drug sales, prostitution or other sale of human beings, sale of stolen goods, sale of illegal weapons, sale of forged items, sale of legal or other regulated professional services by unlicensed persons, and movement of illegal substances such as drugs, poisons, and weapons is likely to still inspire a prosecution in most if not all of the States in the Union. This is true even though it is technically commerce: committing a crime for profit or while traveling does not insulate the actor. This is true even if the particular act is not violative of any Federal statute. There is room for both State and Federal law. States need not merely enact a copy of Federal law and then stop.

4. Another Product Example? Sure.

Plaintiffs issue a plea, P's Resp., p. 20, for an example of a product other than horsemeat for human consumption that must be federally approved before sale but is banned by some States. Radar detectors fit the bill.

Even trucks traveling interstate highways loaded with tons of fresh-killed horsemeat cannot argue with any credibility that State radar detector laws are unconstitutional merely because the devices are legal in some States. *Electolert Corp. v. Berry*, 737 F.2d 110, 112-114 (D.C. Cir.1984) (negative commerce clause and due process do not prevent States from banning

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[4] Plaintiffs also persist in mis-citing *South-Central Timber Development, Inc. v. Wunnicke*, 467 U.S. 82, 100 – 101 (1984), removing the word 'peculiarly' and replacing it with the word 'particularly', as if it this timber-industry case was a broad field preemption case. P's Resp., p. 10. The full sentence from which Plaintiffs once again mis-excerpt is: "In light of the substantial attention given by Congress to the subject of export restrictions on unprocessed timber, it would be **peculiarly** inappropriate to permit state regulation of the subject." (***emphasis added***)

radar detectors or their sale); *Bryant Radio Supply, Inc. v. Slane,* 507 F. Supp. 1325, 1327-1329 (W.D. Va. 1981), judgment affirmed, 669 F.2d 921 (5th Cir. 1982) (state law ban on use of radar detectors not preempted, not a violation of the Supremacy Clause, and not a violation of the commerce clause). The Federal Communications Commission must approve manufactured or imported radar detectors, and the detectors are required to be labeled with an FCC identification number to show that approval. 47 CFR part 15, §§ 15.3, 15.37, 15.101, 15.109; Final Comments and discussion at 67 F.R. 48989-48993 (July 29, 2002).

5. This is Not a Sodomy Case.

It's not.

Surely Plaintiffs are not suggesting by their *Lawrence* argument that horses have due process rights or associational rights or a liberty interest in being commercially slaughtered for human consumption. Or, maybe they are. Regardless, the State Legislature can protect animals from being used by humans in a manner that is not appropriate, even if its way of doing so is imperfect and not complete. The Legislature and the Courts, not the slaughterers, get to decide where that legal line is.

6. Plaintiffs' Version of the 1945 Law's Interaction with the 1949 Law Misfires.

Why, Plaintiffs ask [at P. Resp., p. 6], did the 1949 law drop dogs and cats from the protected group of animals in the 1945 meat prohibition law? Once again, Plaintiffs are trying to position the 1949 law as an amendment into the 1945 law. That is not what it is and that is not what happened. The 1949 law only amended the horse prohibition to expand on it; it only repealed the 1945 ban to the extent of a conflict. Since the 1949 horse law dealt only with horses and not dogs and cats, the dog and cat meat prohibition of 1945 was not impacted by the 1949 horse law at all, erroneous scrivener's notes to the contrary. The 1949 law was never amended

into the 1945 law – it stood apart as a separate law with a similar but not identical number. This is clear from the 1945 [P. Ex. 3, 1 Apx. 31] and 1949 [P. Ex. 1, 1 Apx. 1A-1B] Acts, which Defendant trusts the Court will review more carefully than hoped for by Plaintiffs.

Defendant could all but guarantee that if commercial dog and/or cat meat production became a genuine issue in Texas, the Texas Legislature would attempt to protect Plaintiffs' favorite dogs – and other dogs and cats – from such a fate by passing a law to address it. At any time a State's Legislature becomes concerned about such a possibility, that State's Legislature may address its laws to the problem. Not in Plaintiffs' utopia, obviously, but certainly in the real world. Not every vile act is explicitly prohibited by law because not every vile act has yet or recently or recurrently been committed.

7. The New "Livestock" Definition Does Not Control.

Plaintiffs say that dogs, cats, and primates could not be commercially slaughtered for human food in Texas anyway, since they are not defined as "livestock" in a newly amended Texas' law, Texas Agriculture Code 1.03(3), but that horses may be because they are included in the term.[5] P's Resp., p. 6.

More correctly, when the newly amended law is read in harmony with Chapter 149, it is clear that the new definition is not intended to repeal Chapter 149. A general definition that includes horses as livestock simply does not grant authority to sell horsemeat for human consumption. The Legislature did not alter the definition of a meat processor in Texas Agriculture Code 148.021, which provides:

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[5] The inclusion of horses in the definition cited by Plaintiffs is brand new, coming into effect September 1, 2003, nearly a year after this lawsuit was filed by them. If that new verbage is to be considered the repealer of Chapter 149, it is surely contrary to what the Legislature thought it was doing this past session when it refused to pass the legislation referenced in the legislative Advisory to the Court previously filed by Defendant Curry. The 2003 Texas Legislature declined to legitimize Plaintiffs' business. And, the now-cited section was not the basis of this lawsuit.

> A person is a meat processor subject to this subchapter if the person is engaged in the business of slaughtering cattle, sheep, goats, or hogs and processing or packaging them for sale as meat.

[Where, pray tell, are the horses?]

It is Plaintiffs who most recently pointed out that it is not the slaughter, it is the sale as meat for humans, that is prohibited by Chapter 149. P's Resp., p. 7. That other provisions in the Agriculture Code relating to slaughter mention slaughter of livestock, and that livestock sometimes includes horses, does not reach the basic issue of Chapter 149, the prohibited sale of those slaughtered horses as meat for human consumption. Plaintiffs do acknowledge that it is commercial activity – sales and sales-related activity – that is the prohibition here. But Plaintiffs assert that the prohibition is not entirely logical because it cannot protect all horses from eventual contact between their muscle and some other animal's stomach acid, as if that was some sort of litmus test. Unlike the Legislatures of California, Oklahoma, Mississippi, and Texas, Plaintiffs deem horses unworthy of exemption or protection from commercial activity to supply their flesh for human consumption as food. Try as they might, Plaintiffs cannot then claim that this restriction is a ban on all commerce in horse products or on all commercial horse slaughter for other [non-human consumption] purposes. Clearly, it is not. Plaintiffs' assertion that this amounts to a complete prohibition, rather than a regulation on one use of horsemeat, dissolves in the swirling solvent of Plaintiffs' own argument and the true facts.

8. Let's Jettison the Entire Texas Penal Code, Shall We?

Plaintiffs argue that it is wrong – unconstitutional, actually – to have a law if the law was enacted simply because the act to be prohibited is considered abhorrent.

Wow.

Such a world view turns modern criminal jurisprudence on its head. What standard shall

we use, then?

Plaintiffs cannot set themselves up as the ultimate arbiters of whether a law truly addresses something in which society has a valid interest. That role, remarkably or not, is reserved to the Legislature, not slaughterhouses, with review by the Courts. Plaintiffs stop short of saying, but hint broadly, that only laws essential to civilization, if so many as that, will stand in their brave new world. All others will be declared mere expressions of bias, prejudice, or improper sensibility against someone. [Against whom? Well, obviously, whoever wishes to engage in the prohibited act or consume the prohibited substance.]

Perhaps there is something philosophically appealing to recommend such a minimalist view to criminal law. It does seem that every Legislative session gives prosecutors yet another addition to the list of newly criminalized conduct, conduct which until then was not subject to penal sanction. Maybe that's not always wise. How often have we all, as lawyers, heard people claim that they are being treated illegally merely because the law penalizes some act the accused felt righteous about doing?

Be that as it may, the Legislature is not required to meet Plaintiffs in their preferred world, where nothing is outlawed in Texas if it is legal in the European Community or if it does not breach a specific Federal law. For one thing, the State Legislatures show no inclination to just go home and cede their role to the Federal government once they have raised and spent State funds. For another, if the entire Texas criminal caseload were to move to this Court's docket, nineteen criminal court judges in Tarrant County would be sent on extended golfing vacations and the Federal courts would be awash in petty misdemeanors.

Texas has not lost so much of its sovereignty as to be required to have its Legislature retreat entirely from its ability to discern right from wrong and enact laws accordingly. Most

penal laws are issues for the States. This one is no different. And that is how it should be.

Plaintiffs cannot name an applicable constitutional right held by them that is violated by the horsemeat ban. Rather, they claim that if they want to ship a prohibited product internationally they must be permitted to do so because the illegal sale is Commerce, even if they intend to create, sell, or move the product in a State that does not want to house their industry. Loading their contraband horsemeat onto a plane or truck didn't grant them immunity from prosecution when Defendant Moved for Summary Judgment in September and it doesn't grant them immunity now. If the Federal government wanted to protect such trafficking, it could have done so. It has not made that choice.

For Defendant's part, the 10th Amendment suits him just fine. The Federal government has mighty power, but the power it does not exercise is reserved to the States or to the people.

Just like here, with human consumption horsemeat laws.

9. What is a 'Conflict', Really?

Plaintiffs go back to the big pile of horse and meat laws, searching for a conflict. Plaintiffs posit that because they cannot commercially slaughter horses in Texas for human consumption and Federal law does not prohibit such horse slaughter, there must be a conflict in there somewhere. It's a big pile; surely there must be some good stuff in there.

That old dog won't hunt.

The recent regulatory analysis in comments by the USDA with regard to the double-deck horse trailers shines a clear light on the issue of what is [and what is not] a conflict when it comes to horses meant for slaughter: mere prohibition by a State does not conflict with a Federal law that permits horse slaughter related commerce [in that case, the use of double-deck trailers]. It is not a conflict for a State to outlaw double-deck horse trailers merely because Federal law

does not. After all, the Federal government does not require the double-deck trailers anymore than it requires horse slaughter. It also permits horsemeat to exist. It does not require it. This is the basis for the Comment cited by Defendant,[6] not the reasoning offered by Plaintiffs.

The difference between the two is wide enough to drive a loaded horse trailer through.

10. Preventing Trade in Horsemeat for Human Consumption is Not an Insignificant Interest.

Plaintiffs suggest that if the State has any interest at all in preventing commercial trade in horsemeat for human consumption, that interest is 'minimal and illusory'. P's Resp., p. 12. In other words, Plaintiffs don't think this is a serious issue.

It is not for the Plaintiffs and their slaughter-buddies to decree that the Chapter 149 prohibition on the commercial sale of horsemeat is insignificant. As previous briefing has shown, Texas is not alone in banning horsemeat for human consumption. D's MSJ Brief, pp. 3-4, n. 5. California's law went into effect in 1998, not at the turn of the 19th century. This is not a quirky, Texas-only issue rooted in the deep and misguided past. During the pendency of this lawsuit, the pending Federal bill that would ban horsemeat for human consumption, H.R. 857, has now amassed 152 co-sponsors in the United States House of Representatives. And, Illinois, in which the nation's third horse slaughterhouse is rebuilding after being gutted by fire in 2002 before this lawsuit was filed, has legislation lined up for reintroduction and consideration in that State's January 2004 Legislative Session opening. Illinois introduced bills H.B. 3845 and S.B. 1921, Amendment 1; http://www.legis.state.il.us/ (*pulled for consideration from November veto session, now concluded, until expected reintroduction in January 2004*).

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[6] Brief in Support of Defendant Tim Curry's Motion for Summary Judgment and Response to Plaintiffs' Motion for Summary Judgment [D's MSJ Brief], pp. 17-18.

11. This Case is Not About the Wording of Labels.

Plaintiffs suddenly suggest that the Texas horsemeat label law, not previously challenged by them, is problematic because they say it requires that horsemeat be labeled as not for human consumption and that this requirement conflicts with Federal label requirements. This is apparently a less than exact reference to the language of former art. 4476-3a, Sec. 4. D. Ex. 57, D1 Apx. 1073-1074. The prior "for animal consumption" wording requirement was eliminated in the 1991 Texas codification; horsemeat now need only be marked "horsemeat" to get past the wording language. *See* Texas Agriculture Code 149.004. P. Ex. 1, 1 Apx. 2.

Defendant has previously briefed the State versus Federal, horsemeat versus equine meat issue. D's MSJ Brief, p. 16, n. 26. If Plaintiffs are now urging this interesting but hypertechnical esoterica as a prong of their argument, they miss the heart of the matter. The labeling law has been no issue in this lawsuit until now; the conflict issue applies only to isolated parts of Plaintiffs' activities [relating to non-horse equines], if that; and no threat to prosecute under the Texas label language has been made or alleged. Failure to mark horsemeat as "horsemeat" is merely evidence [albeit *prima facie* evidence, depending on the circumstances of the horsemeat] of an intent to violate the possession, sale, or transfer prohibition, not its own violation. Texas Agriculture Code 149.004. P. Ex. 1, 1 Apx. 2.

It seems pretty obvious that the outcome of this litigation will make clear whether the Plaintiffs may deal in [what Texas considers] horsemeat for human consumption. If the court system rules that they may, obviously the product should be labeled truthfully to say what it is.[7] If the court system says they may not, the issue disappears. Either way, the Plaintiffs' new label

[7] Plaintiffs do not allege that the bulk of their export product does not already say it is horsemeat. But if Chapter 149 is upheld, then the horsemeat cannot be for human consumption and requiring that it be labeled to state that it is horsemeat will not be an issue because it will not conflict with Federal meat laws relating to human food. The FMIA doesn't apply to non-human food. Either way, there is no labeling dispute that will not be decided by the other issues in this suit.

issue is a red herring.

In the extremely unlikely event that Plaintiffs are threatened with arrest by some maverick police officer for having marks or labels that say "equine meat" instead of "horsemeat" on the meat of burros, donkeys, or mules, they clearly know the way to the courthouse. Defendant thinks such a threat of arrest is, at best, wildly speculative on Plaintiffs' part.

12. It's Time to Move On.

The case is now before the Court for resolution on the filings of the parties. Plaintiffs cannot overcome the presumption in favor of the continued existence of the Texas State law and against preemption. Chapter 149 stands, and Defendant asks this Honorable Court to so find.

Defendant prays that Plaintiffs' request for summary judgment and permanent injunction be denied and that Defendant have judgment in all respects.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a true and correct copy of Defendant Curry's Brief In Reply To Plaintiffs' Response To Defendant Tim Curry's Motion For Summary Judgment was served on this date in compliance with the provisions of Rule 5, FED. R. CIV. P. on:

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12/4/03
Date Signed