APPEAL NO. 22-16936

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ANDREW SABLAN SALAS
Plaintiff–Appellant,

v.

UNITED STATES OF AMERICA
Defendant–Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS
Case No. 1:22-cv-00008

AMICI CURIAE BRIEF OF ANIMAL WELLNESS ACTION, ANIMAL WELLNESS FOUNDATION, AND THE CENTER FOR A HUMANE ECONOMY IN SUPPORT OF APPELLEE'S REQUEST TO AFFIRM THE DISTRICT COURT'S JUDGMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Dictionary

Encyclopedia

Reports

Congressional Bill

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, the undersigned counsel of record for *amici curiae* certifies that neither Animal Wellness Action, a 501(c)(4) nonprofit corporation; Animal Wellness Foundation, a 501(c)(3) nonprofit corporation; nor the Center for a Humane Economy, 501(c)(3) nonprofit corporation, as of this date, has a parent corporation and that no publicly held corporation holds 10% or more of their stock.

RULE 29(A)(4)(E) CERTIFICATION

I, Jessica L. Blome, undersigned counsel for Animal Wellness Action, a 501(c)(4) nonprofit corporation; Animal Wellness Foundation, a 501(c)(3) nonprofit corporation; and the Center for a Humane Economy, a 501(c)(3) nonprofit corporation (collectively "Animal Advocates") certify that a party's counsel did not author this brief in whole or in part; neither a party nor a party's counsel contributed money that was intended to fund preparing or submitting this amicus curiae brief; and no person, other than the *amici curiae*, its members, or its counsels, contributed money that was intended to fund preparing or submitting the brief.

Dated: July 2, 2023

/s/ Jessica L. Blome
Jessica L. Blome

ANIMAL ADVOCATES' AMICI CURIAE BRIEF IN SUPPORT OF APPELLEE'S BRIEF

Animal Wellness Action, a 501(c)(4) nonprofit corporation; Animal Wellness Foundation, a 501(c)(3) nonprofit corporation, and the Center for a Humane Economy, a 501(c)(3) nonprofit corporation (collectively "Animal Advocates") respectfully request leave to file the accompanying *amici curiae* brief in support of Appellee's Brief. Animal Advocates support Appellee's Brief because the Animal Welfare Act's animal fighting venture prohibition, 7 U.S.C. § 2156, lawfully prohibits cockfighting in the Commonwealth of the Northern Mariana Islands (the CNMI). Animal Advocates respectfully request that this Court uphold the District Court's judgment.

Per Local Rule 29-3, counsel for Animal Advocates asked the parties for their consent to the filing of this brief, and both Appellant and Appellee consented to the filing of this brief.

I. Amicus Curiae's Statement of Interest

Animal Wellness Action, a 501(c)(4) nonprofit corporation; Animal Wellness Foundation, a 501(c)(3) nonprofit corporation; and the Center for a Humane Economy, a 501(c)(3) nonprofit corporation (collectively "Animal Advocates") have a special interest in this litigation and can offer their unique perspective to the court as it considers whether the federal prohibition against cockfighting lawfully applies to the CNMI. Specifically, Animal Advocates offer

the Court their perspective, experience, and expertise on the evolution of the federal prohibition against cockfighting as well as the interstate and international dimensions of cockfighting and dogfighting enterprises.

A. Animal Advocates are specially interested in the application of the Animal Welfare Act's prohibition against cockfighting throughout the United States, including the CNMI.

Animal Wellness Action, a 501(c)(4) nonprofit headquartered in Washington, D.C., works to promote animal welfare by advocating for the passage and enforcement of laws that protect animals from cruelty. It champions causes that alleviate the suffering of companion animals, wildlife, and farm animals, including roosters. Through its staff, extensive network of members and supporters, and collaborating organizations, Animal Wellness Action battles systemic forms of animal exploitation by advocating for the passage of laws that will protect animals from unnecessary cruelty, encouraging the enforcement of existing animal protection laws, lobbying for the election of candidates who care about animal causes, and building partnerships with groups, agencies, and other stakeholders.

Animal Wellness Foundation is a 501(c)(3) nonprofit corporation headquartered in Los Angeles, California. Animal Wellness Foundation works in concert with the Animal Wellness Centers veterinary hospital in Marina del Rey, California. The veterinary hospital staff often found themselves treating patients

out-of-pocket when clients lacked the necessary funds to save their pets in emergency situations. After realizing the problem was larger than the animal hospital could handle, Animal Wellness Foundation was formed. The Foundation raises funds for medical treatment of companion animals of low-income families, funds spay, neuter, and vaccination programs, fosters animals from shelters in the Los Angeles area, and rescues animals found in situations of abuse, neglect, or abandonment – including dogs victimized by Southern California dogfighting enterprises.

The Center for a Humane Economy (the Center) is a 501(c)(3) nonprofit headquartered in Maryland. It is the first nonprofit of its kind, focusing specifically on influencing the conduct of corporations to forge a more humane economy. Its efforts include corporate engagement, advocacy campaigns, consumer education, and research and analysis of business practices. In a society where consumers, investors, and stakeholders consistently report a preference for the humane treatment of animals, the Center works to make these desires for social responsibility a reality. The Center works to eliminate animal cruelty within commerce and the economy that masquerades as tourism, sport, or recreation, including cockfighting. Cockfighting is a commercial endeavor that crosses interstate and international boundaries. It taints communities across the nation not

only with barbaric and abhorred cruelty but also brings other insidious criminal activities.

Animal Advocates have been tracking the many attempts of cockfighters their allies to invalidate Section 12616 of the Agriculture Improvement Act of 2018 as applied to territories. Before appellant's attempt in the CNMI, others went before courts in Puerto Rico[1] and Guam,[2] and subsequently the First[3] and Ninth[4] Circuits, in order to reestablish legal cockfighting in those islands. The Puerto Rico matter even reached the Supreme Court of the United States, which denied certiorari, handing the cockfighting industry another defeat. Appellant's effort here is another attempt to reverse the lawful exercise of Congress' power in enacting the AIA, and it, too, should fail.

B. This *amici* brief will help inform this Court's consideration of the federal interest in outlawing cockfighting and the many interstate and foreign impacts of cockfighting.

Animal Advocates file this brief to provide the court with their considered perspective on the application of the Animal Welfare Act to animal fighting

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[1] *Club Gallístico de P.R., Inc. v. United States*, 414 F. Supp. 3d 191 (D.P.R. 2019), *aff'd sub nom. Hernández-Gotay v. United States*, 985 F.3d 71 (1st Cir.), *cert. denied*, 142 S. Ct. 336 (2021).

[2] *Linsangan v. United States*, No. CV 19-00145, 2020 WL 6130784, at *1 (D. Guam Sept. 30, 2020), *aff'd*, No. 20-17024, 2021 WL 6103047 (9th Cir. Dec. 22, 2021).

[3] *Supra* note 1.

[4] *Supra* note 2.

ventures throughout the United States and its territories. Specifically, Animal Advocates' brief provides information and expertise regarding the cockfighting industry, its relation to and impact on interstate and foreign commerce, and the legislative intent underlying Congress' decision to prohibit cockfighting throughout the United States and its territories.

In addition, the founder of Animal Wellness Action and the Center for a Humane Economy, Wayne Pacelle, has specialized knowledge and expertise in this area, as Mr. Pacelle was personally involved in the evolution of the Animal Welfare Act's prohibition on cockfighting during his time at Animal Wellness Action and the Center, as well as previously in his role as President and CEO of the Humane Society of the United States. Mr. Pacelle brings a unique perspective as a long-time advocate for the elimination of cruel spectacles like cockfighting and dogfighting, having testified before Congress on the matter.

In recent years, Animal Wellness Action and the Animal Wellness Foundation have conducted comprehensive investigations of cockfighting in Alabama, California, Guam, Kentucky, New Mexico, North Carolina, Oklahoma, Puerto Rico, and Tennessee. Animal Wellness Action has also worked on legislative attempts to further strengthen the animal fighting venture prohibition in

the AWA, including with specific regards to live bird fighting.[5] Finally, in January 2023, Animal Wellness Action and the Center released a 63-page report[6] authored by two veterinarian experts in zoonotic epidemiology, one of whom also served as the Territorial Veterinarian for Guam for 17 years and as commander of the U.S. Army Veterinary Command.

II. Background

Cockfighting is "a blood sport in which two roosters specifically bred for aggression are placed beak-to-beak in a small ring and encouraged to fight to the death."[7] Prior to a fight, trainers strap sharpened knives or "gaffs, which resemble 3-inch-long, curved ice picks," to the legs of the birds so that they may inflict grievous injuries upon one another, such as "punctured lungs, broken bones, and pierced eyes."[8] The weapons affixed to the birds are so formidable that

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[5] This includes a House bill that would have prohibited animal fighting venture broadcasts and shipments or transport of certain mature roosters. H.R. 0309, 117th Cong. (2022).

[6] Dr. Jim Keen & Dr. Tom Pool, Animal Wellness Action & the Cent. for a Humane Econ., *Cock Fighting: playing chicken and gambling with potentially pandemic Avian Influenza and virulent Newcastle Disease* (2023), *available at* https://endcockfighting.org/wp-content/uploads/2023/01/Cockfighting-HPAI-vND-Report-12.30.22.pdf.

[7] The Amer. Soc'y for the Prevention of Cruelty to Animals, *Cockfighting*, *available at* https://www.aspca.org/animal-cruelty/other-animal-issues/cockfighting (last visited June 27, 2023).

[8] The Humane Soc'y of the U.S., *The facts about cockfighting*, *available at* https://www.humanesociety.org/resources/facts-about-cockfighting (last visited June 27, 2023).

cockfighters themselves have been accidentally killed by their own birds.[9] With spectators placing bets on the outcome, the "intensively trained" birds are placed in a circular fighting pit where they fight until a bird is withdrawn due to the extent of its injuries, until the referee determines that one of the birds "has quit" because it will not or physically cannot continue fighting, or until death.[10] Even outside the ring, the birds suffer immensely in their training and raising, which often includes being injected with steroids and other drugs and being isolated into in a small dark box for multiple weeks before a fight.[11]

Cockfighting was introduced into the North American colonies at an early date, but it was soon forbidden at common law as a "cruel and barbarous sport." *State, ex. rel. v. Claiborne*, 505 P.2d 732 (Kan. 1973) (citing *Commonwealth v. Tilton*, 8 Metcalf [Mass.] 232, 3 English Ruling Cases 149). Massachusetts passed laws against animal cruelty in 1836, which began the trend of criminalizing cruelty to animals in the United States.[12] Now illegal in all 50 states and the U.S. territories, cockfighting still persists across the nation, as cockfighters have

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[9] *Id*.

[10] Encyc. Britannica, *Cockfighting, available at* https://www.britannica.com/sports/cockfighting (last visited June 27, 2023).

[11] *Supra* note 8.

[12] *Id*.

adapted to any cultural and legal taboos to continue operating clandestinely.[13] Spectators often gamble during these fights, and cockfighting rings have been tied to other criminal activity such as weapons dealing and illegal drug trafficking.[14] Cockfighting has also been linked to the spread avian flu and virulent Newcastle disease, so much so that the National Chicken Council has in the past "urged Congress… to crack down on cockfighting."[15]

III. Argument

Since its enactment in 1976, the animal fighting venture prohibition of AWA, 7 U.S.C. § 2156 (hereinafter § 2156), has undergone countless amendments to its terms. *See, e.g.*, Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, § 17, 90 Stat. 417, 421–22 (1976); Farm Security and Rural Investment Act of 2002, Pub. L. No. 107–171, § 10302, 116 Stat. 134, 491–92 (2002); Animal Fighting Prohibition Enforcement Act of 2007, Pub. L. No. 110-22, § 3, 121 Stat.

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[13] Wayne Pacelle & Richard L. Pacelle, Jr., *A Legislative History of Nonhuman Animal Fighting in the U.S. and Its Territories*, 29 Society & Animals 87, 87 (2021).

[14] *Supra* note 8.

[15] *Chicken Industry Urges Crackdown on Cockfighting*, National Chicken Council (Apr. 5, 2004), https://www.nationalchickencouncil.org/chicken-industry-urges-crackdown-on-cockfighting/; *see also* Alan Sipress, *Bird Flu Adds New Danger to Bloody Game*, The Wash. Post (Apr. 14, 2005), https://www.washingtonpost.com/archive/politics/2005/04/14/bird-flu-adds-new-danger-to-bloody-game/7f49062b-41fc-404d-ab92-8cdee193b302.

88, 88-89 (2007); Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, § 14207, 122 Stat. 1651, 2223–24 (2008); and more.

The most recent change to § 2156 was contained in Congress' passage of the Agriculture Improvement Act of 2018, Pub. L. No. 115–334, 132 Stat. 4490 (2018) (hereinafter the AIA). Section 12616 of the AIA struck subsection (d) of § 2156 that had read: "the activities prohibited by such subsection [subsection (c)] shall be unlawful with respect to fighting ventures involving live birds only if the fight is to take place in a State where it would be in violation of the laws thereof." 7 U.S.C. § 2156(d) (2014). Section 12616 of the AIA also struck subsection (a)(3) of § 2156, which was an exception to the prohibition against exhibition or sponsorship of fighting birds in states in which live bird fighting ventures were lawful. 7 U.S.C. § 2156(a)(3) (2014).[16]

In summary, as it was drafted in 1976 and continued until 2018, § 2156 contained a mechanism by which a state law prohibiting animal fighting served as a trigger for the federal prohibition to gain force; without such a state statute, the federal prohibition could not be enforced.

[16] "With respect to fighting ventures involving live birds in a State where it would not be in violation of the law, it shall be unlawful . . . to sponsor or exhibit a bird in the fighting venture only if the person knew that any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce for the purpose of participation in the fighting venture." 7 U.S.C. § 2156(a)(3) (2014).

A. The AWA's animal fighting venture prohibition lawfully prohibits cockfighting in the CNMI.

Appellant's argument that the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, *reprinted as amended*, 48 U.S.C. § 1801 note 1 (Covenant) provides the islands with immunity from the federal cockfighting prohibitions fails for a number of reasons. As discussed in the lower court briefing, the Covenant has two relevant mechanisms under which a federal law may apply to the CNMI: Covenant § 105 and § 502. *Id*. at § 105 and § 502. For federal laws that were in existence before the Covenant's enactment on January 9, 1978, and any "subsequent amendments" to those laws, Covenant § 502 controls. *United States ex rel. Richards v. DeLeon Guerrero*, 4 F.3d 749, 756 (9th Cir. 1993). For federal laws enacted after January 9, 1978, Covenant § 102 rules. *Id.* Appellant disagrees and contends that laws must be analyzed under both § 105 and § 502. Appellant Br. 12. Under either approach, however, appellant's arguments are unpersuasive.

First, with regards to § 502, appellant argues that because a single aspect of the law applied differently across the states in 1978, that § 2156 cannot be considered a federal law "of general application to the several States as they are applicable to the several States" as required by § 502 of the Covenant. In other words, they argue, because there was a trigger mechanism within § 2156 by which the prohibition against cockfighting only gains enforceability when the state in

question also outlaws cockfighting, the law as a whole cannot be said to "generally apply" to the several states.

Yet this argument must fail. First, the prohibition against animal fighting ventures, as a whole, "*applied*" across the nation – dogfighting was made illegal across all states and territories, for example. It was only a certain subset of activities – namely, fighting with live birds – that had different operative force across different states. But this does not and cannot mean that the law did not "apply" to all states – i.e., apply generally. The edition of Black's Law Dictionary most contemporaneous to the drafting of the Covenant defines "application" as "[a] bringing together, in order to ascertain some relation or establish some connection; as the application of a rule or principle to a case or fact."[17] Here, that is exactly what § 2156 does: ascertains some relation between federal law operation and intra-state laws.

Appellant next contends that a "law of general application" means that a law must be applied "equal[ly] and uniform[ly]," but that the prohibition against cockfighting was applied "selectively" and "variably." Appellant Br. 18-19. However, this argument makes the common error of confusing equality with equity. States may be treated the same way – that is, equally – and still end with differing results. Even laws that give a public official discretion to remit or

[17] *Application*, *Black's Law Dictionary* (5th ed. 1979).

withhold licenses may even validly constitute a "law of general application." *See City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 760-61 (1988) (invalidating an annual licensing scheme giving unbridled discretion to public officials for disproportionately impacting expression in violation of the First Amendment, but nevertheless referring to said law as a "law of general application")[18]; *see also ATM Exp., Inc. v. City of Montgomery, Alabama*, 376 F. Supp. 2d 1310, 1326 (M.D. Ala. 2005) (finding that that licensing scheme in which officials may consider licenses based on undefined "community standards criteria" was a "law of 'general application'" [citation omitted]). "General" refers to the lack of any specific target of the law or the law's neutrality, rather than to equal impact on all entities affected by the law. Here, all states are subject equally to the exact same provisions of § 2156; no states are distinguished by name or otherwise identified. But, due to the trigger provision in § 2156(d) that applies to all states, a state's internal contemporaneous and mutable conditions affect the enforcement of the federal law.

Second, appellant argues that the prohibition against cockfighting also fails the test under Covenant § 105 because § 2156 "could not have been made

[18] And see the discussion in *Set Enterprises, Inc. v. City of Hallandale Beach*, No. 09-61405-CIV, 2010 WL 11549687, at *20 (S.D. Fla. June 22, 2010), *report and recommendation adopted*, No. 09-61405-CIV, 2010 WL 11549672 (S.D. Fla. Aug. 11, 2010), clarifying that the Supreme Court in *Lakewood* did, indeed, consider the law challenged to be of general application.

applicable to the several states," since, they posit, § 105 demands that the CNMI be specifically named. Covenant § 105 ("… if such [federal] legislation cannot also be made applicable to the several States the [CNMI] must be specifically named therein for it to become effective in the [CNMI]."). Appellant Br. 14.

Here, appellant fails to interpret the textual meaning in the most logical way. The drafters did not use "is not applicable" or "was not applicable," but rather the notable "*cannot* be made applicable"; i.e., impossible to be made applicable or not permitted to be made applicable. The modal verb "cannot" is a linchpin for the meaning of the phrase. This wording choice is best understood as a reaction to concerns about the United States' Commerce Clause power and potential for overreach of federal authority into internal territorial affairs. *See Richards*, 4 F.3d at 754 ("In light of these concerns, we interpret the first sentence of Section 105 to mean that the United States must have an identifiable federal interest that will be served by the relevant legislation."). In any case, § 2156's prohibition against cockfighting can, indeed, be made applicable to the several states, as Congress did so in 2018 through § 12616 of the AIA and as courts have subsequently vindicated as a lawful action under Congress' Commerce Clause power. *See Club Gallístico de P.R.,* 414 F. Supp. 3d 191, *aff'd sub nom*. *Hernández-Gotay*, 985 F.3d 71, *cert. denied*, 142 S. Ct. 336; *United States v. Gilbert*, 677 F.3d 613 (4th Cir. 2012); *Slavin v. United States*, 403 F.3d 522 (8th Cir. 2005).

Finally, appellant's arguments fail on a more fundamental level because he has failed to "plausibly" allege sufficient facts by which the relief he seeks can be granted. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007). Appellant failed to specify how, exactly, he intends to legally raise and fight roosters in cockfights without violating many of the other cockfighting-related activities that are still prohibited by federal law, regardless of the outcome of the instant appeal. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("'[N]aked assertion[s]' devoid of 'further factual enhancement'" does not make a sufficient complaint) (quoting *Twombly*, 550 U.S. at 557). Even if appellant were successful in barring application of the AIA to the CNMI such that he may lawfully "exhibit and sponsor" a live bird in an animal fighting venture, by appellant's own admission, he wishes to also engage in other cockfighting-related activities (such as "raising roosters for cockfighting purposes," Compl. ¶ 6); however, he fails to explain how his raising and fighting of cockfighting birds would be legal under the remaining provisions of § 2156.[19] Many of the amendments to § 2156 over the years that outlawed the additional animal fighting venture-related activities were not subject

[19] *Cf. White v. United States*, 601 F.3d 545, 552-54 (6th Cir. 2010) (holding that gamefowl sellers and breeders challenging animal-fighting provisions of the AWA lacked standing because, *inter alia*, their alleged injuries were not sufficiently traceable to challenged provisions and any injuries were not redressable even if animal-fighting provisions were struck down – because their activities would be illegal anyway under other laws).

to the § 2156(d) exception.[20] Therefore these amendments were, and continue to be, in force uniformly across the United States. Regardless of the outcome here, in order to engage in cockfighting activities legally, appellant will need to abide by those clearly applicable prohibitions, which include the following:

- The sponsorship or exhibition of live birds in a fighting venture if the person knew the bird moved in interstate or foreign commerce for the purpose of cockfighting (§ 2156[a][1]);
- The interstate or foreign sale and transportation of knives, metal spurs, and other sharp instruments for use in cockfighting (§ 2156[e]);
- Knowingly buying, selling, transporting, possessing, delivering, receiving, and training birds for fighting purposes (§ 2156[b]); and
- Knowingly attending a cockfight or causing a child under the age of 16 to attend one (§ 2156[a][2]).

[20] With these amendments that outlawed more and more cockfighting-related activities, Congress modified the exception contained in subsection (d) so that it only applied to the use of the United States Postal Service or any instrumentality of interstate commerce to advertise a live bird or a sharp instrument for cockfighting or to promote or further a cockfight. The Farm Security and Rural Investment Act of 2002 also introduced a separate exception titled "Special rule for certain States" to the prohibition against sponsorship or exhibition of live fighting birds. In sum: even before the enactment of the AIA, the only cockfighting activities that were subject to an exception based on local law were the use of the Postal Service or other interstate commerce instrumentality to advertise birds and instruments and promote cockfights; and sponsorship and exhibition of fighting birds. *See Club Gallístico de P.R.*, 414 F. Supp. 3d at 199-200.

By appellant's own admission, he wishes to "resume raising roosters for cockfighting purposes, and entering such roosters in competitive cockfights." Compl. ¶ 6. The act of raising cockfighting birds includes training the birds for fighting, and certainly includes possession of the birds. Yet training and possessing live birds for use in cockfighting, if that cockfighting in any way is in or affects interstate or foreign commerce, also violates federal law and has since 2008 without exception. 7 U.S.C. § 2156(b). So too does knowingly attending a cockfight. 7 U.S.C. § 2156(a)(2)(A).

Thus, should appellant in his desired future cockfighting endeavors act in or affect interstate commerce in any way, appellant's activities would remain illegal regardless of the outcome here. Unfortunately for appellant, it is extraordinarily unlikely that in the modern day, and even more so on an island, a cockfight would exist entirely outside of interstate commerce *and* without any effect whatsoever on interstate or foreign commerce. *See infra* Part III(B)(1). Nearly the entirety of appellant's activities involving cockfighting would have to exist without the benefit of electronic payments and any use of the Internet. Appellant would have to purchase all his fighting birds locally and all sharp instruments from local manufacturers as well. Perhaps most difficult of all, appellant would need to ensure that all cockfights in which he sponsors or exhibits his birds have no impact whatsoever on interstate commerce; i.e., that no tickets were purchased by anyone

via online means; that no online gambling is being conducted by anyone; that no wagers or prize money is transferred electronically; that none of appellant's competitor's fighting birds were purchased or transported from an interstate or foreign source; and so on. *See United States v. Thompson*, 118 F.Supp.2d 723, 725 (Dist. Ct. W.D. Texas, 1988) (explaining that an animal fighting venture can impact interstate commerce if it "involves participants in the gambling who have crossed state lines, or advertised across state lines, or any of the animals *in the entire venture* have been transported across state lines." [Emphasis added.]). This, for appellant, is categorically unrealistic. Therefore, appellant's bare recitation of his intent to raise and exhibit cockfighting birds, without explanation of how he plans to do so legally under *all* the strictures of § 2156, fails to pass muster, and the court cannot fill the holes of appellant's complaint with inferences. *See Twombly*, 550 U.S. at 554 (courts should not employ "false inferences" to render party's claims plausible).

B. Cockfighting is not a purely internal affair; it has enormous interstate and foreign impacts.

Appellant repeats a well-worn and tired argument: that cockfighting is an internal matter and a "cultural"[21] practice, and federal intrusion on the basis of

[21] In fact, it is believed that cockfighting was brought over to Guam and the CNMI by European colonizers in the 1800s; even Guam's current governor (who is against the AWA's prohibition) has acknowledged that cockfighting "may not be

"moral[ity] and cultur[e]" threatens CNMI self-governance. Appellant Br. 23-26. Similar grounds have been brought before other courts and been handily dismissed, and it should be here by this court as well.

1. Cockfighting is an interstate, interjurisdictional, and international commercial enterprise.

Many courts have recognized that animal fighting ventures are, at their core, commercial enterprises that have a large and inextricable interstate aspect. In *United States v. Gibert*, the Fourth Circuit recognized Congress' determination that the regulation of animal fighting ventures is necessary in order to regulate activities that "are either in interstate or foreign commerce or substantially affect such commerce or the free and unburdened flow thereof, and that regulation of animals and activities as provided in this Act is necessary to prevent and eliminate burden[s] upon such [interstate] commerce, . . . [and] to protect the human values of this great Nation from the subversion of dehumanizing activities[.]" *United States v. Gibert*, 677 F.3d 613, 619 (4th Cir. 2012) (quoting the House Committee

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an indigenous culture," and is instead a relatively recent practice brought to Guam in 19th century by Spanish colonizers. *See* Steve Limtiaco*, Legal cockfighting in Guam ends Friday as federal ban takes effect*, Pacific Daily News (Dec. 19, 2019) *available at* https://www.guampdn.com/story/news/local/ 2019/12/19/guam-cockfighting-federal-ban-us-territories-legal-friday-rooster-doledo-game-club/2672182001/. Cockfighting has been practiced over the globe by many cultures at various times in history; it is not *unique* culturally to any one area or time.

on Agriculture, H.R. Rep. No. 94-801, at 10 [1976]). In banning these ventures, Congress "emphasized the nexus between animal fighting and interstate commerce." *Id*. at 620. With regards to animal fighting ventures using live birds specifically, the Puerto Rico District Court in *Hernández-Gotay* characterized cockfights as ". . . essentially commercial endeavors that encompass a substantial interstate activity that is plainly defined by the statute." *Club Gallístico de P.R.*, 414 F. Supp. 3d at 207.

While there is little data available yet on the details of cockfighting in the CNMI, it stands to reason that the mechanisms of Guam's fighting bird industry are likely similar to that of the CNMI, and further that there is movement of fighting birds from Guam, a major import hub, to the CNMI. In 2019, Animal Advocates identified 60 state-based breeders exporting fighting roosters to Guam.[22] Analyzing avian shipping records maintained by the Guam Department of Agriculture, Animal Advocates determined that five major exporters – located in Alabama, California, Hawaii, North Carolina, and Oklahoma – accounted for 52 percent of the nearly 9,000 game-fowl imported into Guam in more than 500

[22] Wayne Pacelle, *Our Investigation Reveals Massive Illegal Trafficking of Fighting Animals Shipped and Sold from the U.S. Mainland to Guam*, End Cockfighting (Jan. 7, 2020), available at https://endcockfighting.org/our-investigation-reveals-massive-illegal-trafficking-of-fighting-animals-shipped-and-sold-from-the-u-s-mainland-to-guam.

illegal shipments over a 33 month period between 2017 and 2019.[23] The shipments were heavily skewed towards roosters over hens (over 100 to 1, respectively), which strongly implies they were headed for use in fighting rather than agriculture.[24] Animal Advocates further determined and that the top 10 importers in Guam accounted for about 60 percent of imports of fighting birds.[25] In sum, it is a relatively small number of Guamanians that is largely responsible for propagating the cockfighting industry in Guam.

2. Cockfighting has far-reaching and potentially catastrophic public health and safety effects.

During the Senate's debate over the 2007 amendment to the AWA, which prohibited the use of knives and gaffs designed specifically for cockfights, Senator Maria Cantwell justified the prohibition due to the relationship between cockfighting and the spread of avian diseases, which ultimately cost hundreds millions of dollars nationally and which could in the future lead to losses in the billions or even, globally, trillions. 153 Cong. Rec. S451-52 (daily ed. Jan. 11, 2007) (Statement of Sen. Cantwell). Fighting birds are often transported long distances for matches, including across state and national boundaries, and there is also a common practice of trading birds between those participating in the fighting

[23] *Id.*

[24] *Id.*

[25] *Id.*

ventures.[26] Cockfighting also involves practices like beak-blowing ("sucking fluids out of a dying bird's airways…to extend the fight") and frequent exposure to rooster blood, feces, and other fluids; in this way, the potential for disease transmission to humans is far beyond that of typical chicken-human interactions.[27] Add this to poor biosecurity measures employed by those raising fighting birds, underutilization of veterinary services, and hiding of game fowl or otherwise evading authorities,[28] and cockfighting presents a unique storm of conditions to potentially birth the next deadly human pandemic. Indeed, peer-reviewed research has linked the spread of the highly pathogenic avian influenza H5N1 virus to the cockfighting industry, and there is also "high quality if imperfect epidemiologic, molecular, and anecdotal evidence for an important role of the cockfighting industry in the spread of [virulent Newcastle disease] in the U.S. over the past 50 years."[29] Avian influenza and virulent Newcastle disease are responsible for

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[26] *Supra* note 6, at 12.

[27] *Id.* at 17.

[28] *Id*. at 25-26.

[29] *See, e.g.*, *id*. at 2, 26, 31 ("[t]wo of the three US [virulent Newcastle disease] epidemics [in 2002-2003 and 2018-2020] were very likely started by illegally imported cockfighting birds based on the genetic molecular signatures of the index vND strains"); J. S. Malik Peiris et al., *Avian Influenza Virus (H5N1): a Threat to Human Health*, 20 Clinical Microbiology Reviews 243, 249 (2007) ("[o]ther factors that may help to spread HPAI virus include fighting cocks that are moved from place to place, even across country borders, for cockfights.").

economic losses in the hundreds of millions of dollars out of just the poultry industry alone, and have also been responsible for egg prices jumping in the past.[30] If anything, the lessons from the COVID-19 pandemic suggest that one cannot underestimate the potentially catastrophic effect, both economically and public health-wise, of a highly transmissible zoonotic pathogen.

IV. Conclusion

In summary, Animal Advocates respectfully request that the Court affirm the District Court's judgment.

Respectfully submitted this 3rd day of July, 2023,

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[30] *Supra* note 6, at 36.

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the requirements of Fed. R. App. P. 32 because it has been prepared in 14-point Times New Roman, a proportionally spaced font. I further certify that this brief complies with the type-volume limitation set forth in Fed. R. App. P. 32 because it contains 4994 words, excluding exempt material, according to the count of Microsoft Word.

Dated: July 2, 2023,

/s/ Jessica L. Blome
Jessica L. Blome

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2023, I electronically filed the foregoing brief with the Clerk of Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Dated: July 2, 2023

/s/ Jessica L. Blome