APPENDIX

APPENDIX

TABLE OF CONTENTS

Appendix A Opinion in the United States Court of Appeals for the First Circuit (January 14, 2021) . . . . . App. 1

Appendix B Opinion and Order in the United States District Court for the District of Puerto Rico (October 28, 2019) . . . . . App. 19

Appendix C Judgment in the United States District Court for the District of Puerto Rico (October 29, 2019) . . . . . App. 58

Appendix D 7 U.S.C.A. § 2156 Animal fighting venture prohibition Effective: February 7, 2014 to December 19, 2019 . . . . . App. 60

Appendix E 7 U.S.C.A. § 2156 Animal fighting venture prohibition Effective: December 20, 2019 . . . . . App. 66

Appendix F Agriculture Improvement Act of 2018, PL 115-334, December 20, 2018 Sec. 12616 Extending Prohibition on Animal Fighting to the Territories . . . . . App. 71

APPENDIX A

United States Court of Appeals
For the First Circuit

[Filed January 14, 2021]

No. 19-2236

NYDIA MERCEDES HERNÁNDEZ-GOTAY;)
FAUSTINO ROSARIO-RODRÍGUEZ;)
LUIS JOEL BARRETO-BARRETO;)
CARLOS QUIÑONES-FIGUEROA;)
LAURA GREEN,)
)
Plaintiffs, Appellants,)
)
CLUB GALLÍSTICO DE PUERTO RICO, INC.,)
)
Plaintiff,)
)
and)
)
ASOCIACIÓN CULTURAL Y DEPORTIVA DEL GALLO FINO DE PELEA;)
ÁNGEL MANUEL ORTIZ-DÍAZ;)
JOHN J. OLIVARES-YACE;)
ÁNGEL LUIS NARVÁEZ-RODRÍGUEZ;)
JOSÉ MIGUEL CEDEÑO,)
)
Plaintiffs,)

v.)
)
UNITED STATES; UNITED STATES)
DEPARTMENT OF AGRICULTURE;)
SONNY PERDUE, Secretary of the)
Department of Agriculture;*)
UNITED STATES DEPARTMENT)
OF JUSTICE; JEFFREY A. ROSEN,)
Acting Attorney General;** DONALD J.)
TRUMP, President,)
)
Defendants, Appellees.)
)

No. 20-1084

ASOCIACIÓN CULTURAL Y DEPORTIVA)
DEL GALLO FINO DE PELEA; ÁNGEL)
MANUEL ORTIZ-DÍAZ; JOHN J.)
OLIVARES-YACE; ÁNGEL LUIS)
NARVÁEZ-RODRÍGUEZ; JOSÉ MIGUEL)
CEDEÑO,)
)
Plaintiffs, Appellants,)

* It appears that appellants have misspelled the Secretary's name, an error which is reflected in their briefing and on the docket. The Clerk of Court shall amend the case caption to reflect the correct spelling as used in this opinion.

** Pursuant to Fed. R. App. P. 43(c)(2), Acting Attorney General Jeffrey A. Rosen has been substituted for former Attorney General William P. Barr as appellee.

and	)
	)
CLUB GALLÍSTICO DE PUERTO RICO, INC.; NYDIA MERCEDES HERNÁNDEZ-GOTAY; FAUSTINO ROSARIO-RODRÍGUEZ; LUIS JOEL BARRETO-BARRETO; CARLOS QUIÑONES-FIGUEROA; LAURA GREEN,	)
	)
Plaintiffs,	)
	)
v.	)
	)
UNITED STATES; UNITED STATES DEPARTMENT OF AGRICULTURE; SONNY PERDUE, Secretary of the Department of Agriculture; UNITED STATES DEPARTMENT OF JUSTICE; JEFFREY A. ROSEN, Acting Attorney General; DONALD J. TRUMP, President,	)
	)
Defendants, Appellees.	)

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

[Hon. Gustavo A. Gelpí, Jr., U.S. District Judge]

Before

Howard, Chief Judge,
Lynch and Barron, Circuit Judges.

Edwin Prado-Galarza and María A. Domínguez, with whom Rafael Ojeda, Félix Román Carrasquillo, and DMRA Law LLC were on briefs, for appellants.

Jeffrey Bossert Clark, Sr., with whom Ethan P. Davis, Acting Assistant Attorney General, W. Stephen Muldrow, United States Attorney, Abby C. Wright, Attorney, Appellate Staff Civil Division, and John S. Koppel, Attorney, Appellate Staff Civil Division were on brief, for appellees.

Isaías Sánchez-Báez, Solicitor General of Puerto Rico, and Carlos Lugo-Fiol on brief for the Commonwealth of Puerto Rico, amicus curiae.

Jorge Martínez-Luciano, Emil Rodríguez-Escudero, and M.L. & R.E. Law Firm on brief for the Puerto Rico Association of Mayors, amicus curiae.

Ana Maria Hernandez Marti and Jessica L. Blome on brief for Animal Wellness Action, Animal Wellness Foundation, and the Center for a Humane Economy, amici curiae.

January 14, 2021

LYNCH, **Circuit Judge**. Plaintiffs in these consolidated cases challenge the constitutionality of Section 12616 of the Agriculture Improvement Act of 2018 ("Section 12616"), which bans the "sponsor[ship]" and "exhibit[ion]" of cockfighting matches in Puerto Rico. Pub. L. No. 115-334, § 12616, 132 Stat. 4490, 5015-16 (codified as amended at 7 U.S.C. § 2156). Plaintiffs argue that the law exceeds Congress's Commerce and Territorial Clause powers and violates their First Amendment and Due Process rights. We affirm the district court's decision and hold that Section 12616 is a valid exercise of Congress's Commerce Clause power and does not violate plaintiffs' individual rights.[1]

I. Background

On appeal from the grant of the government's motion for summary judgment, we read the facts in the light most favorable to the plaintiffs. Stamps v. Town of Framingham, 813 F.3d 27, 30 (1st Cir. 2016).

Cockfighting is "the sport of pitting gamecocks to fight and the breeding and training of them for that purpose." Cockfighting, Britannica, https://www.britannica.com/sports/cockfighting (last visited Dec. 17, 2020). The birds are bred to fight, are typically armed with steel spurs, and fight until one of the birds dies or

[1] We acknowledge and thank the amici curiae for their submissions in this case. The Puerto Rico Association of Mayors and the Commonwealth of Puerto Rico filed amicus curiae briefs in support of appellants. Animal Wellness Action, Animal Wellness Foundation, and the Center for a Humane Economy submitted an amicus curiae brief in support of the government.

is so injured that it can no longer fight. The Cockfight: A Casebook, at vii (Alan Dundes ed., 1994). The fights may end in a few minutes or go on as long as half an hour. Id. Cockfighting was banned in Puerto Rico from 1898 to 1933, and has since been heavily regulated under local Puerto Rico law. See P.R. Laws Ann. tit. 15 §§ 301 et seq.

In 1976, Congress amended the Animal Welfare Act ("AWA") to ban "animal fighting venture[s]," now defined as "any event, in or affecting interstate or foreign commerce, that involves a fight conducted . . . between at least 2 animals for purposes of sport, wagering, or entertainment." 7 U.S.C. § 2156(f)(1); Animal Welfare Act Amendments of 1976, Pub. L. No. 94-279, 90 Stat. 417, 421-22 (codified as amended at 7 U.S.C. § 2156). Those 1976 amendments contained an exception allowing fights between "live birds" which took place in any state where such fights were allowed under state law. Animal Welfare Act Amendments of 1976 § 17. Puerto Rico is treated as a state under the AWA. 7 U.S.C. § 2156(f)(3).

Congress has amended the animal fighting venture prohibition several more times. As of 2018, before the passage of the law at issue in this case, Congress had banned attendance at all animal fighting ventures -- including those in Puerto Rico and other jurisdictions which still allowed cockfighting -- and the "[b]uying, selling, delivering, possessing, training, or transporting" of animals for the purpose of having the animal participate in an animal fighting venture. 7 U.S.C. § 2156(a)(2), (b) (2018).

In 2018, Congress passed Section 12616, which removed the remaining exception that allowed individuals to "[s]ponsor[] or exhibit[]" cocks in fights if allowed under local law and if they lacked knowledge that the cocks were moved in interstate commerce for purposes of cockfighting. See Section 12616(a)**;** 7 U.S.C. § 2156. It also closed an exception which had allowed the use of interstate mail or services to advertise or promote cockfights taking place in states which permitted cockfighting. See Section 12616(b); 7 U.S.C. § 2156(c); Farm Security and Rural Investment Act of 2002, Pub. L. No. 107-171 § 10302, 116 Stat. 134, 492.

The sponsors of Section 12616 explained that prohibiting cockfighting would "move to end the cruelty of animal fighting," "protect . . . communities from associated crimes such as illegal drug dealing and human violence," and "safeguard against the spread of diseases in poultry such as avian flu, since birds used in cockfighting are particularly vulnerable." Further, "[a]fter a 2002 outbreak of exotic Newcastle disease in the U.S., which cost taxpayers nearly $200 million and the poultry industry many millions more, the USDA implicated cockfighting as a culprit in spreading the disease."

II. Procedural History

On May 22 and August 1, 2019, plaintiffs filed two suits to enjoin the enforcement of Section 12616.[2] The

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[2] Plaintiffs were individuals and a corporation which own cockfighting rings; individuals who breed, own, or invest in birds; individuals who work for cockfighting arenas; an artisan who crafts cockfighting-inspired art to be sold across state lines; and

cases were consolidated by the district court on August 5, 2019.

Plaintiffs asserted a number of claims, including that Section 12616 violated their First Amendment and Due Process rights, and that Congress exceeded its powers under the Commerce and Territorial Clauses. Club Gallístico de P.R. Inc. v. United States, 414 F. Supp. 3d 191, 201 (D.P.R. 2019). The plaintiffs lodged both facial and as-applied pre-enforcement challenges to the statute. Id. at 200.[3]

The government asserted that plaintiffs did not have standing to challenge the portions of the animal fighting venture ban that were unchanged by Section 12616.[4] Id. at 203.

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a cultural association dedicated to "preserving the tradition, culture, and economic benefits of cockfighting."

[3] Any facial challenge fails because the statute has "plainly legitimate sweep." Wash. State Grange v. Wash. State Republican Party, 552 U.S. 442, 449 (2008). Therefore, we address only the as-applied challenge.

[4] On appeal, plaintiffs have dropped their claims that Section 12616 violates the anti-commandeering doctrine, that Section 12616 is a Bill of Attainder, that Section 12616 is inapplicable to Puerto Rico under the Puerto Rico Federal Relations Act, that Section 12616 violates the Takings Clause, and that Section 12616 violates their right to travel. Club Gallístico de P.R. Inc., 414 F. Supp. 3d at 201. The district court rejected each of these claims. Id. at 201-02, 208-09, 211-12.

The government did not renew its argument that plaintiffs lacked standing.

The parties filed cross-motions for summary judgment. Id. at 201. The district court granted the government's motion and denied plaintiffs' motion. Id. at 202.

The district court first held that the plaintiffs had "standing to challenge the constitutionality of Congress' extension of the animal fighting prohibition to the Commonwealth of Puerto Rico and those provisions that have existed prior to Section 12616's approval." Id. at 204.

The district court then concluded that Section 12616 was a valid exercise of Congress's Commerce Clause and Territorial Clause powers. Id. at 204-08. It next held that cockfighting is not expressive conduct and so is unprotected by the First Amendment, and that Section 12616 did not violate plaintiffs' right of free association because it does not actually restrict association. Id. at 209-10. The district court rejected the substantive Due Process claim because there is no fundamental right to cockfighting and there was a rational basis for passing Section 12616. Id. at 211. It also rejected plaintiffs' procedural Due Process claim, stating that "the legislative process itself provides citizens with all of the process they are due." Id. (quoting Correa-Ruiz v. Fortuño, 573 F.3d 1, 15 (1st Cir. 2009)).

This appeal followed.[5]

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[5] Plaintiff Club Gallístico de Puerto Rico, Inc. withdrew from this appeal after the notice of appeal was filed.

III. Analysis

We review the district court's grant of summary judgment de novo. Irish v. Fowler, 979 F.3d 65, 73 (1st Cir. 2020). We first address the issue of standing, followed by the Commerce Clause, First Amendment, and Due Process arguments.

A. Standing

Federal courts have "an independent obligation to assure that standing exists, regardless of whether it is challenged by any of the parties." Summers v. Earth Island Inst., 555 U.S. 488, 499 (2009).

To have standing, a plaintiff must "'allege[] such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction." Id. at 493 (quoting Warth v. Seldin, 422 U.S. 490, 498-99 (1975)). "To satisfy Article III's 'personal stake' requirement vis-à-vis a statutory challenge, the plaintiff bears the burden of demonstrating that (i) she has suffered an actual or threatened injury in fact, which is (ii) fairly traceable to the statute, and (iii) can be redressed by a favorable decision." Ramírez v. Sánchez Ramos, 438 F.3d 92, 97 (1st Cir. 2006) (first citing Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61 (1992); and then citing Lewis v. Cont'l Bank Corp., 494 U.S. 472, 477 (1990)). "[A] plaintiff satisfies the injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" Susan B. Anthony List v. Driehaus, 573 U.S. 149, 159 (2014) (quoting Babbitt v.

United Farm Workers Nat'l Union, 442 U.S. 289, 298 (1979)).

We conclude that plaintiff Ángel Manuel Ortiz-Díaz, the owner of two cockfighting venues and a breeder and owner of more than 200 gamecocks, has standing to challenge Section 12616. Ortiz faces a credible threat of prosecution under Section 12616 because he regularly sponsors and exhibits cockfighting matches at his cockpits.[6] The other standing requirements are clearly met. Article III's case-or-controversy requirement is satisfied if at least one party has standing. Bowsher v. Synar, 478 U.S. 714, 721 (1986).

We also hold that Ortiz's claims are ripe. Ortiz's business is to sponsor and exhibit cockfights, and Section 12616 bans such activity. Thus, there is a controversy with "sufficient immediacy and reality to warrant the issuance of a declaratory judgment." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007) (quoting Md. Cas. Co. v. Pac. Coal & Oil Co., 312 U.S. 270, 273 (1941)).

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[6] Although Section 12616 does not define "sponsor[ship]" or "exhibit[ion]," the government has stated that it would understand at least one of those terms to encompass Ortiz's conduct for purposes of enforcing the statute.

As to the other plaintiffs, each of them is involved in the same class of commercial activities as Ortiz. See County of Los Angeles v. Davis, 440 U.S. 625, 631 (1979); United States v. Poulin, 631 F.3d 17, 21 (1st Cir. 2011).

B. Commerce Clause

Plaintiffs argue that Congress exceeded its authority under the Commerce Clause in enacting Section 12616.

The Commerce Clause empowers Congress to regulate "activities that substantially affect interstate commerce." United States v. Lopez, 514 U.S. 549, 559 (1995). This includes "purely local activities that are part of an economic 'class of activities' that have a substantial effect on interstate commerce." Gonzales v. Raich, 545 U.S. 1, 17 (2005). "In assessing the scope of Congress' authority under the Commerce Clause, . . . [w]e need not determine whether [plaintiffs'] activities, taken in the aggregate, substantially affect interstate commerce in fact, but only whether a 'rational basis' exists for so concluding." Id. at 22 (quoting Lopez, 514 U.S. at 557).

In making this inquiry, we consider four factors:

> (1) whether the statute regulates economic or commercial activity; (2) whether the statute contains an "express jurisdictional element" that limits the reach of its provisions; (3) whether Congress made findings regarding the regulated activity's impact on interstate commerce; and (4) whether "the link between [the regulated activity] and a substantial effect on interstate commerce was attenuated."

United States v. Morales-de Jesús, 372 F.3d 6, 10 (1st Cir. 2004) (alteration in original) (quoting United States v. Morrison, 529 U.S. 598, 610-12 (2000)).

As to the first factor, plaintiffs argue in passing that the statute "does not truly regulate economic or commercial activity." But, as explained by the Fourth Circuit, the AWA bans animal fights for "purposes of sport, wagering, or entertainment," all of which are "closely aligned in our culture with economics and elements of commerce." United States v. Gibert, 677 F.3d 613, 624 (4th Cir. 2012). And here, the government does not assert that the jurisdictional element, which defines the regulated activity as that "in or affecting interstate or foreign commerce," 7 U.S.C. § 2156(f)(1), would be satisfied were there no commercial aspect to a particular cockfight. Moreover, on this record, Ortiz's sponsorship and exhibition of cockfights for profit is clearly economic and commercial, as are the activities of the remaining plaintiffs.

As to the second factor, the plaintiffs argue that the "express jurisdictional element" of the AWA -- which bans all cockfighting "in or affecting interstate or foreign commerce," 7 U.S.C. § 2156(f)(1) -- is an "illusion" which does not articulate a meaningful boundary between interstate and intrastate commerce. As the Supreme Court has explained, an express jurisdictional element "may establish that the enactment is in pursuance of Congress' regulation of interstate commerce," Morrison, 529 U.S. at 612, and can "ensure, through case-by-case inquiry, that the [prohibited conduct] in question affects interstate commerce," Lopez, 514 U.S. at 561. And, as we have noted above, the government does not argue that the jurisdictional element would be satisfied as to a cockfight lacking a commercial aspect. Thus, the

jurisdictional element here is sufficient. See id. at 561-62.

As to the third factor, plaintiffs argue that Congress made no findings regarding the 2018 amendments' impact on interstate commerce. Plaintiffs assert that we should not look to Congress's reasons for banning animal fighting ventures in general, because they challenge only Section 12616. We disagree. Section 12616 extended the existing ban to Puerto Rico rather than creating entirely new restrictions, so earlier findings are relevant and must be considered.

Multiple congressional findings underscore the interstate commercial impact of cockfighting. Congress clarified in the AWA's "statement of policy" that the "animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof." 7 U.S.C. § 2131. As pointed out by the Fourth Circuit, the House Report discussing the 1976 amendments found that animal fighting ventures "(a) attract fighting animals and spectators from numerous states, (b) are or have been advertised in print media of nationwide circulation, and (c) often involve gambling and other 'questionable and criminal activities.'" Gibert, 677 F.3d at 625 (quoting H.R. Rep. No. 94-801, at 9 (1976), as reprinted in 1976 U.S.C.C.A.N 758, 761). Senator Maria Cantwell also noted that cockfighting can contribute to the spread of avian flus, a concern of particular importance given the present ongoing COVID-19 pandemic. See 153 Cong. Rec. S451-52 (daily ed. Jan. 11, 2007) (Statement of Sen. Cantwell).

As to the fourth factor, plaintiffs argue that Section 12616's effect on interstate commerce is incidental and attenuated. In light of the jurisdictional hook, and the nature of the plaintiffs' relationship to commercial cockfighting, in this case the effects on interstate commerce are certainly not incidental.

These factors require the conclusion that the prohibitions in the statute are about activities which substantially affect interstate commerce. We hold that Section 12616 is a legitimate exercise of the Commerce Clause power.[7]

B. First Amendment

Plaintiffs argue that Section 12616 infringes on their First Amendment freedoms of speech and association. We reject both claims.

The First Amendment states that "Congress shall make no law . . . abridging the freedom of speech." U.S. Const. amend. I. Conduct "sufficiently imbued with elements of communication" is also protected under the First Amendment. Texas v. Johnson, 491 U.S. 397, 404 (1989) (quoting Spence v. Washington, 418 U.S. 405, 409 (1974)). However, conduct cannot "be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." United States v. O'Brien, 391 U.S. 367, 376 (1968). In deciding whether conduct deserves First Amendment protection, we ask both whether it was "intended to be communicative" and whether it, "in context, would reasonably be

[7] As the Commerce Clause power is sufficient, we need not reach the Territorial Clause issue.

understood by the viewer to be communicative." Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 294 (1984). "It is the duty of the party seeking to engage in allegedly expressive conduct to demonstrate that the First Amendment applies to that conduct." Wine & Spirits Retailers, Inc. v. Rhode Island, 418 F.3d 36, 49 (1st Cir. 2005).

Plaintiffs argue that cockfighting in Puerto Rico is expressive conduct entitled to First Amendment protection. We disagree. Plaintiffs' assertion that cockfighting "express[es] their culture and deeply rooted sense of self-determination" is insufficient to show that their sponsorship or exhibition of cockfighting "would reasonably be understood by the viewer to be communicative." Cmty. for Creative Non-Violence, 468 U.S. at 294; see also United States v. Stevens, 559 U.S. 460, 469 (2010) (recognizing "long history" of banning animal cruelty). By the same token, the O'Brien test does not apply here because plaintiffs have failed to identify any expressive element in the cockfighting activities that they engage in such that Section 12616 could be considered even an incidental burden on speech. See O'Brien, 391 U.S. at 376-77. Even had plaintiffs shown that their cockfighting activities contained some expressive element, Section 12616 is plainly permissible as an incidental restraint on such speech. See id. at 377.

Plaintiffs next argue that Section 12616 infringes on their First Amendment associational right to "peaceably . . . assemble." U.S. Const. amend. I. They argue that "the criminalization of cockfighting in Puerto Rico deters Appellants from assembling to

discuss and express their views regarding cockfighting." This argument fails. Nothing in Section 12616 curtails any discussion or expression of a person's views regarding cockfighting, and this section does not restrict assembly for those purposes at all. See Knox v. Serv. Emps. Int'l Union, Local 1000, 567 U.S. 298, 309 (2012) (noting that under the Free Assembly Clause, "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed"); Holder v. Humanitarian L. Project, 561 U.S. 1, 39 (2010) (distinguishing prior free association cases that penalize "mere" or "simple" association as opposed to "the act of giving material support" (quoting Humanitarian L. Project v. Reno, 205 F.3d 1130, 1133 (9th Cir. 2000))). Section 12616 cannot be invalidated on this ground.[8]

C. Due Process

Plaintiffs next argue that the passage of Section 12616 violated their procedural and substantive Due Process rights.

Plaintiffs conceded at oral argument that they have no cognizable liberty interest at stake other than their purported First Amendment interest. That concession dooms the argument they are making. Even apart from their concession, plaintiffs have not shown that they

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[8] Plaintiffs' reference to the Universal Declaration of Human Rights is of no avail. "[T]he Declaration does not of its own force impose obligation as a matter of international law." Sosa v. Alvarez-Machain, 542 U.S. 692, 734 (2004); see also Medellín v. Texas, 552 U.S. 491, 504-05 (2008) (stating that non-self-executing treaties do not create domestic law).

have any cognizable liberty interest which is being infringed by these prohibitions. We reject their procedural and substantive Due Process challenges.[9] See U.S. Const. amends. V, XIV (protecting only against the deprivation of "life, liberty, or property, without due process of law"); Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 569-70 (1972).

IV. Conclusion

The judgment of the district court is affirmed.

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[9] It is still unsettled whether due process requirements apply to Puerto Rico by way of the Fifth or Fourteenth Amendment. See Tenoco Oil Co. v. Dep't of Consumer Affs., 876 F.2d 1013, 1017 n.9 (1st Cir. 1989). This is of no matter, because "the language and policies of the Due Process Clauses of the Fifth and Fourteenth Amendments are essentially the same." United States v. Neto, 659 F.3d 194, 201 n.7 (1st Cir. 2011) (internal quotation marks and citation omitted).

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 19-1481 (GAG); (consolidated with Civil No. 19-1739 (GAG))

[Filed October 28, 2019]

CLUB GALLISTICO DE PUERTO RICO INC. et al.,

Plaintiffs,

v.

UNITED STATES OF AMERICA et al.,

Defendants.

OPINION AND ORDER

"What's good for the goose is good for the gander." This well-known proverb illustrates the central issue in the case at bar: equal treatment before the law. In United States v. Pedro-Vidal, 371 Supp. 3d 57 (D.P.R. 2019), the Court noted that since the territory of Puerto Rico's acquisition in 1898, "Congress has enacted thousands of federal laws that apply therein." Id. at 58. Moreover,

> Congress has the authority to enact laws that apply to citizens in the territory of Puerto Rico *exactly* as they would to citizens in the States.

> However, by way of legislation, Congress may treat differently citizens in the territory, for example, those which cap Social Security, Medicare, and Veteran benefits.

Id. at 58-59. The Pedro-Vidal case involved the Federal Death Penalty Act of 1994 (FDPA), 18 U.S.C. §§ 3591-3598, and whether it applied to the Commonwealth of Puerto Rico just as in every state. The Court ruled that it did. Similarly, Section 12616 of the Agriculture Improvement Act of 2018, *infra*, that amends the Animal Welfare Act of 1966 (AWA), *infra*, falls within that first category of laws. Under the Commerce Clause, Congress has the unquestionable authority to treat the Commonwealth *equally* to the states. Neither the Commonwealth's political status, nor the Territorial Clause, impede the United States Government from enacting laws that apply to all citizens of this Nation alike, whether in a state or territory.

On May 22, 2019 Club Gallístico de Puerto Rico, Inc. ("Club Gallístico") and other plaintiffs[1] filed a Complaint (Civil No. 19-1481 (GAG)), pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202, against the President of United States, the United States Government, and other defendants[2] alleging

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[1] The other plaintiffs include Mr. Luis Joel Barreto Barreto, Mr. Faustino Rosario Rodríguez, Mr. Carlos Quiñones Figueroa, and Mrs. Nydia Mercedes Hernández. (Docket No. 1).

[2] The other defendants are: the U.S. Attorney General, the U.S. Department of Justice, the U.S. Secretary of Agriculture and the Department of Agriculture. (Docket No. 1).

that the recent Section 12616 amendments to the AWA which extend the prohibition on animal fighting ventures to the Commonwealth of Puerto Rico and other territories violate bedrock principles of federalism and rights protected under the United States Constitution. On August 1, 2019, Asociación Cultural y Deportiva del Gallo Fino de Pelea ("Asociación Cultural") and other plaintiffs[3] filed a parallel complaint (Civil No. 19-1739 (GAG)), against the United States Government and all other defendants proffering similar allegations as in Club Gallístico's suit and pleading additional constitutional rights violations. On August 5, 2019, this Court consolidated both actions.[4]

The two lead Plaintiffs, Club Gallístico and Asociación Cultural, are both non-profit organizations involved in the Commonwealth of Puerto Rico's cockfighting industry. (Docket Nos. 1; 16). The former operates one of the largest and "most visited" cockfighting arenas in the island and the latter is an association whose goal is to promote and preserve cockfighting in the territory. Id. The remaining Plaintiffs have participated in the Commonwealth's cockfighting world as cockpit owners, cockpit judges and other officials, gamecock breeders and owners, artisans, and otherwise cockfighting enthusiasts. They

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[3] The other plaintiffs include Mr. Ángel Manuel Ortiz Díaz, Mr. John J. Oliveras Yace, Mr. Ángel Luis Narváez Rodríguez and Mr. José Miguel Cedeño. (Docket No. 16).

[4] On this date, Club Gallístico and others amended their original complaint to include a new plaintiff, Mrs. Laura Green. (Docket No. 21).

all request this Court to issue a declaratory judgment holding that the Section 12616 amendments are unconstitutional. Following the filing of the Complaints, the parties agreed to a fast-tracked briefing schedule for summary judgment cross-motions and replies.

Currently, pending before the Court are Plaintiff Club Gallístico and others' Motion for Summary Judgment (Docket No. 34) and Defendant United States and others' Cross-Motion for Summary Judgment.[5] (Docket No. 38).

I. Background

A. Legal History of Cockfighting

According to the Encyclopedia Britannica, *cockfighting* is "the sport of pitting gamecocks to fight and the breeding and training of them for that purpose." *Cockfighting*, Encyclopædia Britannica (2016). Similarly, renowned folklorist Alan Dundes indicates that "[t]he cockfight, in which two equally matched roosters -typically bred and raised for such purposes and often armed with steel spurs (gaffs)—engage in mortal combat in a circular pit surrounded by mostly if not exclusively male spectators, is one of the oldest recorded human games or sports." A. Dundes, THE COCKFIGHT: A CASEBOOK vii

[5] For purposes of this Opinion and Order, the Court will either refer to Plaintiffs and Defendants collectively or only to lead Plaintiff Club Gallístico and/or Defendant United States. Notwithstanding, the Court's reasonings and rulings equally apply to all Plaintiffs and Defendants.

(University Wisconsin Press, 1994). Professor Dundes further highlights that the contest has been "banned in many countries on the grounds that that [it] constitutes inhumane cruelty to animal" yet "continues to flourish as an undergrounds or illegal sport." Id.

In colonial North America, cockfighting was introduced at an early date and reached its peak popularity between 1750 and 1800, notably in the colonies that extended from North Carolina to New York. Ed Crews, *Once Popular and Socially Acceptable: Cockfighting*, The Colonial Williamsburg Journal (Autumn 2008) available at https://www.history.org/Foundation/journal/Autumn08/rooster.cfm. Nonetheless, during these years colonial authorities occasionally tried to ban it. For example, in 1752, the College of William and Mary directed its students to avoid it all together. Id. Following the Revolutionary War, "some citizens of the new United States looked upon cockfighting as an unsavory vestige of English culture and advocated its abandonment." Id. By the mid-1800s, cockfighting was mostly considered "cruel and wrong" and several states had passed laws against animal cruelty, including Massachusetts. Id.; see also Commonwealth v. Tilton, 49 Mass. 232 (1844).

In the case of Puerto Rico, historians posit that cockfighting has been practiced in the island since the late eighteenth century. Following the United States' acquisition of the territory in 1898, General Guy Vernor Henry, the island's second military governor, enacted a law forbidding animal cruelty, which specifically included cockfights. See BEAKS AND SPURS: COCKFIGHTING IN PUERTO RICO, National Register of

Historic Places Multiple Property Documentation Form, National Parks Services (May 29, 2014). This prohibition lasted until August 12, 1933 when Governor Robert Hayes Gore approved a law, authored by then Senate President Rafael Martínez Nadal, making these contests legal once again. In the decades following this law's approval, others were passed that sought to regulate every aspect of this industry. The most recent of these laws is the Puerto Rico Gamecocks of the New Millennium Act, Act 98-2017 as amended, P.R. LAWS ANN. tit. 15, §§ 301 *et seq*. Under this Act, the Commonwealth's government enabled cockfighting; delegated its oversight to the Sports and Recreation Department; authorized the issuance of licenses to cockpits, gamecock breeders, and cockfight judges; and, established penalties for anyone who violated this law. Id.

On the other hand, and as detailed in the subsequent section, since 1976 Congress has progressively outlawed cockfighting throughout the Nation. Parallel to efforts at the federal level, all fifty states, and the District of Columbia, have effectively prohibited these fighting ventures. See COCKFIGHTING LAWS, National Conference of State Legislatures, Vol. 22, No. 1 (January 2014). Louisiana's ban passed in 2007 and it is the most recent state legislative action in this direction. Id. Although cockfighting remains illegal in all states, punishments vary across the board; some states prohibit ancillary activities, thirty-one states permit possession of cockfighting implements and twelve states allow possession of fighting live-birds, even though cockfighting itself remains illegal. Id. Until the passage of the Agriculture

Improvement Act of 2018, the only jurisdictions that had not proscribed cockfights comprised the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands and the United States Virgin Islands. Id.

B. The Animal Welfare Act of 1966

In 1966, Congress enacted the Laboratory Animal Welfare Act (LAWA) primarily "to protect the owners of dogs and cats from theft of such pets" and to prevent the sale or use of stolen pets and ensure humane treatment in research facilities. See Laboratory Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (1994 & Supp. V). Four years later, the Animal Welfare Act of 1970 amended the LAWA to more generally address issues concerning mammal and bird brutality. In 1976, and relevant to this case, the Animal Welfare Act Amendments of 1976 outlawed for the first-time all animal fighting ventures in which animals were moved in interstate or foreign commerce. See P. L. No. 94-279, 90 Stat. 417 (1976). An animal fighting venture extended to any event involving a fight "between at least two animals" for purposes "of sport, wagering, or entertainment", except events where animals hunt other animals. Id. Anyone found engaging in these activities was subject to a monetary fine ($5,000 maximum) or imprisonment (1-year maximum). Id. Nonetheless, the amendments contained a provision, sub-section (d), which exempted live-bird fighting ventures if the fight occurred "in a State where it would be in violation of the laws thereof." Id. For purposes of the AWA, the term "State" included, and *still does*, "the

Commonwealth of Puerto Rico, and any territory or possession of the United States." Id.

Following this initial ban, Congress has gradually expanded the range of animal fighting prohibitions, notably those concerning live-bird fights. In 2002, the Farm Security and Rural Investment Act of 2002, P. L. No. 107-171, 116 Stat. 134 (2002), limited the live-bird exemption through a "Special Rule for Certain States" provision which applied to persons who sponsored or exhibited live-birds in a fighting venture only if said persons knew that "any bird in the fighting venture was knowingly bought, sold, delivered, transported, or received in interstate or foreign commerce." Id. In 2007, the Animal Fighting Prohibition Enforcement Act, Pub. L. No. 110-22, 121 Stat. 88 (2007), increased the imprisonment penalty to a 3-year maximum and made it unlawful for a person to "knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird" for purposes of a live-bird fighting venture. Id. The "sharp instruments" prohibition applied equally to all "States", as defined under the AWA. Id. Pursuant to these amendments, Congress also modified the wording of the 1976 original exemption, sub-section (d). Given the 2002 "Special Rule for Certain States" provision, sub-section (d) was now limited to exempt these States from complying with the prohibition on the use of the mail service of the United States Postal Service for purposes of promoting or furthering an animal fighting venture. Id.

The following year, the Food Conservation and Energy Act of 2008, P. L. No. 110-234, 122 Stat. 923 (2008), increased yet again the imprisonment sentence to a five-year maximum and expanded the prohibitions to generally include "possessing" and "training" animals for fighting purposes. Id. Like the 2007 amendments, Congress made no exemptions for States that lawfully permitted animal fighting ventures. Finally, in 2014 the Agricultural Act of 2014, P. L. No. 113-79, 128 Stat. 649 (2014), banned the attendance to animal fights, or causing individuals less than 16 years old to attend such activities. Likewise, Congress did not make an exception for jurisdictions which had not proscribed live-bird fighting.

To summarize, prior to the enactment of the Section 12616 amendments of 2018, at the federal level a person could not knowingly sponsor or exhibit a live-bird in a fighting venture, except in jurisdictions where it was legal pursuant to the "Special Rule for Certain States" provision, 7 U.S.C. § 2156(a)(3), unless the person knew that the birds participating in the fight were "bought, sold, delivered, transported or received" in interstate or foreign commerce for this purpose. Similarly, a person could not: (1) attend an animal fighting venture or cause a minor younger than 16 years old to attend; (2) possess or train any animal for purposes of a fighting venture; and (3) sell, buy, transport or deliver in interstate commerce any sharp instruments to be attached to a live-bird's leg for fighting. Finally, it was illegal to use the U.S. Postal Service to advertise an animal fighting venture or promote sharp instruments designed for live-bird fights, except if this transpires in a state were live-bird

fighting was legal under sub-section (d), 7 U.S.C. § 2156(d).

II. Motions for Summary Judgment

The parties have both filed statement of uncontested facts and objections to each other's. On the one side, Defendants allege that Plaintiffs fail to comply with Local Rule 56 and FED. R. CIV. P. 56 because most of their proposed facts are immaterial, conclusory or contain information lacking sufficient knowledge to assess its veracity or falsity. (Docket No. 39 at 1-2). For this reason, Defendant United States proposes its own set of seven (7) undisputed facts. Id. at 13-14. On the other hand, Plaintiff Club Gallístico's objects to Defendants' proposed facts and contends that most statements concern questions of law that should be disregarded. (Docket No. 58 at 1).

A. Local Rule 56

Under Local Rule 56, L. CV. R. 56, if a party improperly controverts the facts, the Court may treat the opposing party's facts as uncontroverted. See Puerto Rico Am. Ins. Co. v. Rivera-Vazquez, 603 F.3d 125, 130 (1st Cir. 2010). Similarly, the Court can ignore "conclusory allegations, improbable inferences, and unsupported speculation." Rossy v. Roche Prod., Inc., 880 F.2d 621, 624 (1st Cir. 1989). Because Plaintiffs filed the present Complaint pursuant to the Declaratory Judgment Act and plead a pre-enforcement facial, and at times as-applied, constitutional challenge to Section 12616, the Court will only consider those undisputed and uncontested facts which are essential to evaluate these contentions.

B. Relevant Facts

On December 20, 2018 Congress approved the Section 12616 amendments, under the Agriculture Improvement Act of 2018, PL 115-334, 132 Stat. 4490 (2018). (Docket Nos. 39 ¶ 1; 58 ¶ 1). The provisions of Section 12616 go into effect one year after the date of its enactment, to wit, December 20, 2019. (Docket Nos. 39 ¶ 2; 58 ¶ 2). These amendments eliminate the "Special Rule for Certain States" and sub-section(d) provisions contained in the "Animal Fighting Venture Prohibition" section of the AWA, 7 U.S.C. § 2131 *et seq*. (Docket Nos. 34 ¶ 12; 39 ¶ 3). The ultimate effect, thus, is the prohibition of animal fighting ventures, including live-bird fighting, in every United States jurisdiction, including the Commonwealth of Puerto Rico. Id.

All plaintiffs have participated in animal fighting events, specifically those involving live-birds, either operating or assisting in the operation of these ventures in a manner that might be construed as sponsoring or exhibiting an animal fighting ventures. (Docket No. 34 ¶¶ 4; 29). Plaintiffs have also bought or sold live-birds, and "sharp instruments" as defined by the AWA, in interstate commerce for fighting and non-fighting purposes. (Docket No. 34 ¶¶ 26-27).

Besides the parties, the Commonwealth of Puerto Rico, the Resident Commissioner (the sole representative in Congress from the Commonwealth), the Commonwealth's House of Representatives and Senate, the Asociación de Alcaldes (Mayors'

Association),[6] the Municipality of Mayagüez, and Attorney Juan Carlos Albors have presented briefs, as *amici curiae*, in support of Plaintiffs.[7]

C. Arguments in Support of Motions for Summary Judgment

Plaintiffs' Motion for Summary Judgment arguments can be classified in two main categories: structural constitutional violations, notably to federalism principles, and fundamental rights infringements. First, Plaintiff Club Gallístico claims that Section 12616: (1) exceeds Congress's authority to regulate and legislate cockfighting activities under the Commerce Clause and the Territorial Clause; (2) violates the Tenth Amendment's anti-commandeering doctrine; (3) constitutes a bill of attainder, and (4) is "locally inapplicable" to the Commonwealth of Puerto Rico pursuant to the Federal Relations Act, 48 U.S.C. § 734. As for the second line of arguments, Plaintiffs assert that Section 12616 specifically infringes a "cultural right" to cockfighting and more broadly violates their First Amendment freedom of speech and association rights, their Fifth Amendment substantive and procedural Due Process rights, and limits their right to travel. Finally,

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[6] The Court notes that this party's brief was originally stricken from the record (Docket No. 46) as it referred to the President of the United States in an improper manner. A corrected brief was filed the next day. (Docket No. 48).

[7] The Court also notes that it did not consider the untimely filed *amicus* brief by the Animal Wellness Foundation, in support of Defendants' cross-motion for summary judgment. (Docket No. 76).

Plaintiffs assert that the enforcement provision of Section 12616 effectively amounts to an impermissible taking of their property because it has devalued and, thus, requires a just compensation.

In turn, Defendants posit in their Cross-Motion for Summary Judgment that, pursuant to the Commerce Clause and the Territorial Clause, Congress can restrict animal fighting in the fifty States and extend this prohibition to all territories. Defendants also contend that the Tenth Amendment does not apply to the Commonwealth of Puerto Rico and that Section 12616 preempts, through the Supremacy Clause any law or regulation that legalizes cockfighting in the territory. Similarly, Defendant further argues that Section 12616 does not meet the exceptional requirements that produce a bill of attainder, that Congress explicitly intended the amendments to apply it in the territory and that no physical or regulatory taking has, or will, occur because property devaluation needs no compensation. Consequently, Defendants conclude that Section 12616 does not violate the Constitution in any form or manner. Additionally, Defendants aver that Plaintiff Club Gallístico lacks standing to challenge several AWA provisions because they were not contested within the general six-year statute of limitations, under 28 U.S.C. § 2401(a).

Plaintiffs' Reply to Defendants' motion for summary judgment rehashes most of their main arguments and, additionally, argues that they have standing to attack those AWA provisions that now fully apply to the Commonwealth. (Docket No. 57).

Grounded on the foregoing analysis, Plaintiff Club Gallístico and others' Motion for Summary Judgment is **DENIED** and Defendant United Sates and others' Cross-Motion for Summary Judgment is **GRANTED**.

D. Standard of Review

Summary judgment is appropriate when "there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). See FED. R. CIV. P. 56(a). A "genuine" issue is one that could be resolved in favor of either party, and a "material fact" is one that has the potential of affecting the outcome of the case. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248-50 (1986); see also Calero-Cerezo v. U.S. Dep't of Justice, 355 F.3d 6, 19 (1st Cir. 2004). Under Rule 56, "[t]he evidence illustrating the factual controversy cannot be conjectural or problematic; it must have substance in the sense that it limns differing versions of the truth which a factfinder must resolve." Medina-Muñoz v. R.J. Reynolds Tobacco Co., 896 F.2d 5, 8 (1st Cir. 1990). Under this standard, "[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. (citing Anderson, 477 U.S. at 249-50). Finally, summary judgment may be appropriate if the parties "merely rest upon conclusory allegations, improbable inferences, and unsupported speculation." Rossy, 880 F.2d at 624; see also Rivera-Rivera v. Medina & Medina, Inc., 898 F.3d 77, 87 (1st Cir. 2018).

"Cross-motions for summary judgment do not alter the summary judgment standard, but instead simply

require [the Court] to determine whether either of the parties deserves judgment as a matter of law on the facts that are not disputed." Wells Real Estate Inv. Trust II, Inc. v. Chardon/Hato Rey P'ship, S.E., 615 F.3d 45, 51 (1st Cir.2010) (citing Adria Int'l Group, Inc. v. Ferré Dev. Inc., 241 F.3d 103, 107 (1st Cir.2001)) (internal quotation marks omitted). Although each motion for summary judgment must be decided on its own merits, "each motion need not be considered in a vacuum." Watchtower Bible Tract Soc'y of New York, Inc. v. Municipality of Ponce, 197 F. Supp. 3d 340, 348 (D.P.R. 2016) (citing Wells Real Estate, 615 F.3d at 51). "Where, as here, cross-motions for summary judgment are filed simultaneously, or nearly so, the district court ordinarily should consider the two motions at the same time, applying the same standards to each motion." Wells Real Estate, 615 F.3d at 51 (quoting P.R. American Ins., 603 F.3d at 133) (internal quotation marks omitted).

Besides this well-known standard, the Court also considers the Supreme Court's formulations for assessing a declaratory judgment that challenges statutes, facially and as-applied, grounded on constitutional rights violations. See Libertarian Party of New Hampshire v. Gardner, 843 F.3d 20, 24 (1st Cir. 2016). See also Gillian E. Metzger, Facial and As-Applied Challenges Under the Roberts Court, 36 FORDHAM URB. L. J. 773, 796 (2009). The Declaratory Judgment Act serves the valuable purpose of enabling litigants to clarify legal rights and obligations before acting upon them. Ernst & Young v. Depositors Econ. Prot. Corp., 45 F.3d 530, 534-35 (1st Cir. 1995). The question in declaratory judgments is "whether the facts

alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." MedImmune, Inc. v. Genentech, Inc., 549 U.S. 118, 127 (2007). For this reason, "federal courts retain substantial discretion in deciding whether to grant declaratory relief." Ernst & Young, 45 F.3d at 534.

On the other hand, in United States v. Salerno, 481 U.S. 739, the Supreme Court held that a pre-enforcement facial challenge can only succeed where the plaintiff "establishes that no set of circumstances exists under which the Act would be valid." Id. at 745. See also Hightower v. City of Bos., 693 F.3d 61, 77-78 (1st Cir. 2012) ("[T]hat the statute lacks any plainly legitimate sweep.") (citations omitted) (internal quotation marks omitted). Similarly, in an as-applied challenge, when plaintiff alleges "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder" he or she "should not be required to await and undergo a criminal prosecution as the sole means of seeking relief." Babbitt v. United Farm Workers Nat'l. Union, 442 U.S. 289, 298 (1979) (internal quotation marks omitted). See also Sindicato Puertorriqueño de Trabajadores v. Fortuño, 699 F.3d 1, 9 (1st Cir. 2012); McGuire v. Reilly, 230 F. Supp. 2d 189, 191 n. 5 (D. Mass. 2002), aff'd, 386 F.3d 45 (1st Cir. 2004).

In the end, a fundamental premise of judicial review requires courts to presume that all legislation is constitutional. When presented with a claim to invalidate a congressional enactment, a court must find a "plain showing that Congress has exceeded its constitutional bounds." United States v. Morrison, 529 U.S. 598, 607 (2000).

III. Discussion

A. Standing

Defendants argue that Plaintiffs lack standing to challenge the constitutionality of several provisions contained in the AWA that were "unaffected by [Section] 12616 [] and have applied to Puerto Rico for years." (Docket No. 38 at 6). Specifically, Defendant United States posits that Plaintiff Club Gallístico's motion for Summary Judgment attempts to invalidate the prohibition on: (1) attending animal fighting venture; (2) possessing live-birds intended for fighting, and (3) selling and/or buying "sharp instruments" designed for live-bird fights. See 7 U.S.C. §§ 2156(a)(2); 2156(b); 2156(e). Defendants assert that these provisions applied to the Commonwealth prior to Section 12616's passage. These statutory prohibitions, as explained by Defendants, were enacted in 2014, 2002, and 2007, accordingly. Thus, they cannot be challenged because any such action would fall outside the six-year statute of limitations, under 28 U.S.C. § 2401(a) ("[E]very civil action commenced against the United States shall be barred unless the complaint is filed within six years after the right of action first accrues.")

Plaintiffs contend that Defendants' argument "makes no sense" because "How can Plaintiffs *Sponsor or exhibit* their birds for cockfighting if *possessing* gamecocks is illegal? How can Plaintiffs *Sponsor or exhibit* their birds for cockfighting *if they cannot attend* cockfights?" (Docket No. 57 at 4) (emphasis in original). To support this assertion, Plaintiff Club Gallístico claims that "the statute of limitations applicable was equitably tolled, simply because the [a]gencies in charge of enforcement did not do so. So there was no need to seek redress [,] because in [the Commonwealth] cockfighting is, and was, legal during the statutory period [and] the limitations period had not run." (Docket No. 57 at 5-6). Similarly, Plaintiffs advance that their Complaint was timely filed under the "reopener doctrine" and that their claims are not barred by laches. Id. at 7-8.

The doctrine of standing involves "both constitutional and prudential dimension." Mangual v. Rotger-Sabat, 317 F.3d 45, 56 (1st Cir. 2003). "An inquiry into standing must be based on the facts as they existed when the action was commenced." Id. To satisfy "Article III's personal stake requirement vis-à-vis a statutory challenge," plaintiffs bear the burden of demonstrating that they: (1) have suffered an actual or threatened injury in-fact, which is (2) fairly traceable to the statute, and (3) can be redressed by a favorable decision. See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992); see also Ramírez v. Sanchez Ramos, 438 F.3d 92, 97 (1st Cir. 2006)

Given the declaratory remedy sought by Plaintiffs, and the Supreme Court's standard for evaluating facial

and as-applied challenges to statutes, the Court holds that Plaintiffs indeed have standing to challenge the constitutionality of Congress' extension of the animal fighting prohibition to the Commonwealth of Puerto Rico and those provisions that have existed prior to Section 12616's approval. When assessing alleged constitutional rights violations, "a credible threat of present or future prosecution itself works an injury that is sufficient to confer standing, even if there is no history of past enforcement." New Hampshire Right to Life Political Action Comm. v. Gardner, 99 F.3d 8, 13 (1st Cir. 1996) (citing Doe v. Bolton, 410 U.S. 179, 188 (1973)). Nonetheless, the fact that these provisions have not been *frequently* enforced or prosecuted by the federal government does not entail that they have not been applicable to the Commonwealth since 2002, 2007 and 2014, respectively.[8]

B. Federalism, Commerce Clause and Territorial Clause

The Federalism doctrine involves the shared distribution of power between our national and state governments, while separation of powers principles establish a system of "checks and balances" between the three branches of government. See Erwin Chemerinsky, CONSTITUTIONAL LAW: PRINCIPLES AND

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[8] In 2016, the Federal Government filed a criminal complaint against defendant Mr. Ehbrín Castro-Correa, for violating 7 U.S.C. § 2156(b) by unlawfully possessing and training dogs for fighting purposes. Following trial, a jury found Mr. Castro-Correa guilty of this charge and he was sentenced to twenty-one months of imprisonment by this same Court. See United States v. Castro-Correa, No. 16-153 (PG/GAG).

POLICIES 1 (5th Ed., 2015). In the present case, both doctrines are intertwined. When the citizens of a state, or territory, challenge the legislative and executive's powers to act and regulate their affairs, the judicial branch asserts its power and is called to solve the controversy. However, a court cannot sit as a "super-legislator" to amend or repeal the work of the other branches, absent a clear showing that they have exceeded the limits of the Constitution. Under our federalist structure and the separation of powers framework, Congress has the undeniable authority to treat the Commonwealth of Puerto Rico *uniformly* to the States and eliminate live-bird fighting ventures across every United States jurisdiction. The source of this authority rests primarily in the Commerce Clause and Supremacy Clause and alternatively in the Territorial Clause.

a. Commerce Clause

Plaintiffs' main argument involves an allegation that Section 12616 was not enacted to regulate interstate commerce, under the Commerce Clause, but rather "to burden [them] on the basis of their identity as residents of a territory" and does not pass rational basis review. (Docket No. 34 at 21). In support, Plaintiff Club Gallístico avers that these amendments are essentially a "criminal law that have nothing to do with commerce," Id. at 24, and that Congressional findings do not support the same because "no committee and/or public hearings . . . were scheduled." Id. at 42. Plaintiff Club Gallístico further contends that other states have on "their own volition and choosing, decided to make cockfighting illegal, not the

federal government." Id. at 26. Finally, Plaintiffs assert that Congress cannot ban these fighting events based on "moral concerns" as reflected from the statements made by members of Congress during the House of Representatives session debate about the Section 12616 amendments.

On the other hand, the United States argues that other federal courts "have had no difficulty finding the animal fighting prohibition, as applied to the states, to be an appropriate exercise of the Commerce Clause." (Docket No. 38 at 8). Thus, in this case, the same analysis should apply. In United States v. Gilbert, 677 F. 3d 613 (4th Cir. 2012), the Court held that "Congress acted within the limitations established by the Commerce Clause in enacting the animal fighting statute." Id. at 624.[9] Plaintiffs contend that Gilbert should not apply because the case is of "criminal nature." (Docket No. 57 at 8-9). Such proposition is flawed. Congress, pursuant to the Commerce Clause, may enact both civil and criminal laws. See generally United States v. López, 514 U.S. 549 (1995).

The Commerce Clause delegates to Congress the power "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes." U.S. CONST. art. I, § 8, cl. 3. Congress moreover has the authority under the Commerce Clause to regulate

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[9] Defendants also cite, in support of their Commerce Clause position,the following cases: United States v. Lawson, 677 F.3d 629 (4th Cir. 2012); Slavin v. United States, 403 F.3d 522 (8th Cir. 2005); United States v. Thompson, 118 F. Supp. 2d 723 (W.D. Tex. 1998); United States v. Bacon, 2009 WL 3719396 (S.D. Ill. Nov. 5, 2009).

commerce with the Commonwealth of Puerto Rico. Trailer Marine Transport Corp. v. Rivera Vazquez, 977 F.2d 1, 7, n. 3 (1st Cir. 1992); accord Estado Libre Asociado v. Northwestern Selecta, 185 P.R. Dec., P.R. Offic. Trans., 40 (P.R. 2012). See also Consejo de Salud Playa de Ponce v. Rullán, 586 F. Supp. 2d 22, 37 (D.P.R. 2008).

The judicial test for analyzing a challenge under the Commerce Clause has evolved over the past decade following the Supreme Court's rulings in United States v. López and United States v. Morrison, 529 U.S. 598 (2000); see also Gonzales v. Raich, 545 U.S. 1 (2005). In this Circuit, there are four factors to consider when determining if a statute regulates an activity that has a substantial effect on interstate commerce: (1) whether the statute regulates economic or commercial activity; (2) whether the statute contains an "express jurisdictional element" that limits the reach of its provisions; (3) whether Congress made findings regarding the regulated activity's impact on interstate commerce, and (4) whether the link between the regulated activity and a substantial effect on interstate commerce was attenuated. United States v. Morales-de Jesus, 372 F.3d 6, 10 (1st Cir. (citing Morrison U.S. 529 at 610-12). When Congress legislates pursuant to a valid exercise of its Commerce Clause authority, the Court scrutinizes the enactment according to rational basis review. See United States v. Lewko, 269 F.3d 64, 67 (1st Cir. 2001).

When considering the factors set forth by the Supreme Court, and reiterated by the First Circuit, the Court finds that Section 12616 does not exceed the

Commerce Clause's limits. First, it is unquestionable that the amendments being challenged forbid a quintessential economic activity. As Plaintiffs and several *amici* parties admit, live-bird fights in the Commonwealth are not only considered a commercial activity but also an allegedly lucrative one.[10] Second, the extension of the animal fighting prohibition to the Commonwealth of Puerto Rico and other territories implies that the statutory definition of "animal fighting prohibition venture" now applies fully to the territory. The current definition states that this event must be one "in or affecting interstate or foreign commerce." 7 U.S.C. § 2156(g)(1). This wording meets the Supreme Court's concern, as expressed in López and Morrison, as to whether the statute at hand has a nexus to interstate commerce.

As to the third factor, provided that Section 12616 extends to the Commonwealth and the other territories an *existing* prohibition, the Court reviews initially the Congressional Committee findings dating back to the original enactment of the animal fighting statute and subsequently those on recent amendments. The Sixth Circuit's decision in Gilbert, *supra*, points out, these fighting ventures: (1) "attract fighting animals and spectators from numerous states"; (2) "are or have been advertised in print media of nationwide circulation", and (3) "often involve gambling and other questionable and criminal activities." Gilbert, 677 F. 3d at 625 (citing H.R. Rep. No. 94-801, at 761 (1976)) (quotation

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[10] The Court addresses in a separate section the economic impact, presented by Plaintiffs and *amici* parties, on the live-bird fighting prohibition.

marks omitted). Additionally, members of Congress have also considered the connection between animal fighting and avian diseases and the economic consequences that would accompany a "bird flu" pandemic. See 153 Cong. Rec. S451-52 (daily ed. Jan. 11, 2007) (Statement of Sen. Cantwell); 153 Cong. Rec. E2 (daily ed. Jan. 5, 2007) (Statement of Rep. Gallegly). On May 18, 2018, the House of Representative debated the Section 12616 amendments currently being challenged. The proponents, Rep. Peter Roskam (R-Ill.) and Rep. Earl Blumenauer (D-Ore.), noted that Section 12616 sought to extend to the territories the legal standard that already existed with respect to the fifty States. 64 Cong. Rec. 80, H 4213, at H 4221 (daily ed. May 18, 2018) (statement of Rep. Roskam). Moreover, their intention was to close "a loophole" because Congress "***should have no separate rules for States, territories, or anywhere under our jurisdiction***." 164 Cong. Rec. 80, H 4213, at H 4222 (daily ed. May 18, 2018) (statement of Rep. Blumenauer) (emphasis added).[11]

When analyzing these Congressional findings as whole, the Court finds that they are sufficient to support the assertion that live-bird fighting events have a substantial effect on interstate commerce. Therefore, the nexus between extending the live-bird fighting prohibition to the Commonwealth and other

[11] To date, nonetheless, there continues to exist federal legislation which discriminates against the United States citizens residing in the territories. See United States v.Vaello Madero, 356F. Supp. 3d208(D.P.R. 2019); Consejo de Salud Playa de Ponce v. Rullán, 586 F. Supp. 2d 22, 23 (D.P.R. 2008).

territories is not attenuated. On the contrary, there exists a direct connection between the means and the end because live-bird fighting ventures are essentially commercial endeavors that encompass a substantial interstate activity as plainly defined by the statute. The Court notes that lead Plaintiff Club Gallístico described itself in the Amended Complaint as a "tourism mecca" where "many fans and tourists . . . yearly flock the territory to participate and/or enjoy the sport;" which includes "visitors from all over the world." (Docket No. 21 ¶¶ 8-9). If taken as true, then the effect on interstate commercial activity is undeniable.

As part of the rational basis analysis, the Court will first entertain arguments concerning general aspects of federalism put forward by Plaintiffs and several *amici* parties. The fact that every State in the Nation has already banned live-bird fights, does not hinder Congress from reinforcing its illegality at the federal level. The animal fighting prohibition has been the law of the land since 1976, yet it created an exemption for States, as defined by the AWA, that specifically permitted live-bird fights in their jurisdictions. As detailed in the introductory section, Congress has progressively closed this legal gap between both "sovereigns" and has now established a federal threshold as to prohibitions on animal fighting activities, particularly live-bird fights. At a state level, every one of the Nation's fifty states, and the District of Columbia, can prosecute any person who unlawfully engages in these events. This state prerogative does not impede the federal government's authority, under its police power, to likewise prosecute these offenses at a federal level. Under Section 12616, the United States

can now prosecute people who participate in live-bird fighting events *even* if that jurisdiction legally permits that activity, pursuant to the "Conflict with State Law" provision of the AWA, 7 U.S.C. § 2156(i)(1) ("The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder"). Following the elimination of the AWA's "Special Rule for Certain States" and sub-section(d) provisions, there exists a "direct and irreconcilable conflict" with all jurisdictions, like the Commonwealth of Puerto Rico, that legally allow these activities. For practical purposes, absent the exemptions and under the "Conflict with State Law" provision, Congress has superseded the Puerto Rico Gamecocks of the New Millennium Act and any other Commonwealth regulations involving live-bird fights. See U.S. CONST. ART. VI; Brown v. United Airlines, Inc., 720 F.3d 60, 63 (1st Cir. 2013) ("A state law that offends the Supremacy Clause is a nullity.") (internal quotation marks omitted). See also Hines v. Davidowitz, 312 U.S. 52, 67 (1941) (Even in the absence of a direct conflict, a state law violates the Supremacy Clause when it "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.")

The main rationale behind these amendments, according to the Congressional record, was to equate the legal standard applicable to the Nation's fifty States to all its territories, irrespective of other

purported "moral" considerations articulated in House of Representative's session debate. For this reason, this Court must defer to Congress's findings on the matter and determine that there exists a rational basis to regulate live-bird fighting in the Commonwealth and other territories because it affects interstate commerce and the means of regulation, a comprehensive prohibition of these fighting ventures is reasonably adapted to that legislative end. See Heller v. Doe, 509 U.S. 312, 321 (1993) ("[C]ourts are compelled under rational basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends. A classification does not fail rational basis review because it is not made with mathematical nicety or because in practice it results in some inequality.")

b. The Territorial Clause

The Territorial Clause gives Congress authority to "make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." U.S. CONST. ART. IV, § 3, cl. 2. Congress's ultimate source of authority over the Commonwealth of Puerto Rico only applies in this case insomuch it decides whether and how a federal statute applies to Puerto Rico. Antilles Cement Corp. v. Fortuño, 670 F.3d 310, 320 (1st Cir. 2012). In this aspect, "[a]ll federal laws, criminal and civil in nature, apply to Puerto Rico as they apply to the States, *unless otherwise provided*." Consejo de Salud Playa de Ponce, 586 F. Supp. 2d at 37 (emphasis added). The Section 12616 amendments were specifically enacted to extend an already nationwide prohibition to the territories.

c. Tenth Amendment and Bill of Attainder

Plaintiffs posit that by enacting Section 12616, Congress is requiring the Commonwealth "to enforce a federal law" and dictating "what the Puerto Rico legislature may and may not do, as it pertains to cockfighting" in direct violation of the Tenth Amendment and anti-commandeering doctrine. (Docket No. 34 at 47-49). Defendants counter this position advancing that the Tenth Amendment's federalism protections do not apply to the Commonwealth. (Docket No. 38 at 21).

The Court agrees with Defendants. It is well settled that "[the]he limits of the Tenth Amendment do not apply to Puerto Rico, which is 'constitutionally a territory,' because Puerto Rico's powers are not '[those] reserved to the States' but those specifically granted to it by Congress under its constitution." Franklin California Tax-Free Tr. v. Puerto Rico, 805 F.3d 322, 344-45 (1st Cir. 2015), aff'd, 136 S. Ct. 1938 (2016) (quoting United States v. Lopez Andino, 831 F.2d 1164, 1172 (1st Cir. 1987) (Torruella, J., concurring)). Likewise, as the Court previously articulated, Congress, under both the Commerce Clause and Supremacy Clause, has essentially preempted the law and regulations that legalized live-bird fighting ventures in the Commonwealth.

On the other hand, Plaintiffs argue that the Section 12616 amendments create "an unconstitutional bill of attainder aimed and [at] preventing conduct that Congress fears they might engage in . . . the violation of laws of those states banning cockfighting and/or

certain paraphernalia or specific activities." (Docket No. 34 at 51). Similarly, Plaintiff Club Gallístico avers that these amendments "clearly singles out an easily identifiable group of people" and punishes them for engaging in a "cultural right." Id.

For a statute to qualify as a bill of attainder it must: (1) specify the affected person or group, (2) impose punishment by legislative decree, and (3) dispense with a judicial trial. Elgin v. U.S. Dep't of Treasury, 641 F.3d 6, 19 (1st Cir. 2011). The Supreme Court "has struck down statutes on bill of attainder grounds only *five times* in the nation's history." Id. (emphasis added). The Section 12616 amendments do not come even close to meeting these requirements. As Defendants correctly point out in their cross-motion, these amendments: (1) "identif[y] particular proscribed conduct, which would amount to a violation no matter who performed it" and (2) "establish[] a general norm for conduct and allows for violations of the act to be adjudicated by the *Judiciary*, not the Legislature." (Docket No. 38 at 22).

d. Puerto Rico Federal Relations Act

Plaintiff Club Gallístico and other *amicis* argue that Section 12616 is "locally inapplicable" under the Puerto Rico Federal Relations Act, 48 U.S.C. § 734. The test for examining whether a law can be "locally inapplicable" to the Commonwealth is well-established under First Circuit's precedent. The inquiry as to whether a statute applies to the Commonwealth of Puerto Rico entails "matters of congressional intent." United States v. Acosta-Martínez, 252 F.3d 13, 18 (1st Cir. 2001) (citing People of Puerto Rico v. Shell Co., 302 U.S. 253, 258 (1937)). "If Congress has made clear its

intent that a federal statute apply to Puerto Rico, then the issue of whether a law is otherwise 'locally inapplicable' does not, by definition, arise." Id.

It is unquestionable that Section 12616 applies to the Commonwealth. As Defendants point out the title for the amendments *explicitly* reads: "Extending prohibition on animal fighting to the territories" and the legislative history shows Congress's undeniable intention to extend the animal fighting venture prohibition to the Commonwealth. (Docket No. 38 at 22).

C. Plaintiffs' Constitutional rights claims

Plaintiffs argue that Section 12616 violates several rights under the Constitution of the United States. At the outset, Plaintiffs posit that cockfighting should be classified as a fundamental "cultural right" pursuant to the United Nations' Universal Declaration of Human Rights and the Puerto Rico Gamecocks of the New Millennium Act. (Docket No. 34 at 8). No such right exists in our Federal Constitution and the Supreme Court has consistently rejected any expansion to the Bill of Rights. See Washington v. Glucksberg, 521 U.S. 702, 720 (1997).[12] Plaintiff Club Gallístico aims to

[12] Even a wide-ranging analysis of the Ninth Amendment, U.S. CONST. amend. IX, does not seem to contemplate this sort of "cultural rights." Id. ("The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."). Justice Robert Jackson once stated, "Ninth Amendment rights . . . are still a mystery to me." Robert H. Jackson, The Supreme Court in The American System of Government 74-75 (1955).

establish a "cultural right" by drawing parallels to other fundamental rights, such as freedom of speech and association, free exercise of religion, substantive and procedural due process, equal protection, and right to travel, among others, attempting to trigger a strict or heightened scrutiny analysis. The Court applauds Plaintiffs' legal creativity, however rejects said argument. The AWA, and the Section 12616 amendments, can only be construed as socioeconomic legislation and, as previously discussed, satisfy a rational basis scrutiny. Nonetheless, the Court will address Plaintiffs' constitutional rights claims *seriatim*.

a. First Amendment

Plaintiffs' First Amendment claim is two-fold. First, they allege that the live-bird prohibition "facially targets conduct," unduly burdening their right to speech and that said prohibition does not survive a judicial challenge under the test for symbolic protected expression enunciated in United States v. O'Brien, 391 U.S. 367 (1968). (Docket No. 34 at 22-23). Furthermore, Plaintiff Club Gallístico contends that these amendments violate their right to free association because Plaintiffs are entitled to "perpetuate their culture through assembly and cockfighting." (Docket No. 34 at 21-22). Defendant United States opposes these arguments asserting that Section 12616 has not "curtailed Plaintiffs' ability to speak or associate in favor of cockfighting and its importance to Puerto Rican culture" and that pursuant to United States v. Stevens, 559 U.S. 460 (2010), the depiction of animal cruelty may be considered protected expression, but not

the conduct itself. Alternatively, Defendants point out that the amendments comply with the O'Brien test.

The Court agrees with Defendants. A live-bird fighting venture does not fall within any expressive or non-expressive protected conduct. Even if it falls under a protected category, "[t]he government has a freer hand in restricting expressive conduct than it has in restricting the written or spoken word." Texas v. Johnson, 491 U.S. 397, 406 (1989). On this issue, the Supreme Court has constantly rejected the "view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea." O'Brien, 391 U.S. at 376; see also Wisconsin v. Mitchell, 508 U.S. 476, 484 (1993). It is undisputed that the AWA's statement of policy, and legislative aim over the decades, includes a rejection of animal violence. 7 U.S.C. § 2131 ("The Congress further finds that it is essential to regulate the . . . care, handling, and treatment of animals . . . by persons or organizations engaged in using them . . . for exhibition purposes . . . or for any such purpose or use.") In this aspect, "expressive activities that produce special harms distinct from their communicative impact" are not entitled to constitutional protection. Roberts v. United States Jaycees, 468 U.S. 609, 628 (1984). Moreover, the Court agrees with Defendants' reading of Stevens, which establishes a 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.

As for the right to association claim, the Section 12616 amendments, will not prohibit Plaintiffs from assembling to discuss and express their views regarding cockfighting and other cultural issues. Nevertheless, the First Amendment does not protect assembly for unlawful purposes or to engage in a criminal activity. See De Jonge v. Oregon, 299 U.S. 353, 364-65 (1937); see also Scales v. United States, 367 U.S. 203, 229-30 (1961). Additionally, in support of these claims, Plaintiffs fleetingly mention in their Motion for Summary Judgment the Supreme Court's decision in Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah, 508 U.S. 520 (1993) in which a Florida city ordinance that prohibited ritual animal sacrifices was struck down. There is no doubt that partaking in live-bird fighting ventures does not violate the Free Exercise Clause, nor can it be classified as a protected religious belief.[13]

b. Substantive and Procedural Due Process

Plaintiffs claim that Congress violated their procedural Due Process rights because "Puerto Rico has no real political representation" in the federal legislative branch and consequently had no opportunity to participate in Section 12616's enactment. (Docket No. 34 at 42-43). Moreover, they argue that Congress deprived them of a meaningful opportunity to be heard. Id.

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[13] It is worth noting that Plaintiffs seemed to have abandoned this argument when opposing Defendants' cross-motion for summary judgment.

The Court finds this argument to be unfounded. Plaintiff Club Gallístico does not have a cognizable liberty or property interest deprived by the enactment of the Section 12616 amendments. Even if Plaintiffs had a valid property interest, "the legislative process itself provides citizens with all of the process they are due." Correa-Ruiz v. Fortuño, 573 F.3d 1, 15 (1st Cir. 2009) (citations omitted) (quotation marks omitted). The Commonwealth of Puerto Rico might not have a voting member in Congress, but its Resident Commissioner participated in the House of Representatives legislative session debating this issue and strongly voiced her opposition. See 164 Cong. Rec. 80, H 4213, at H 4222 (daily ed. May 18, 2018) (statement of Rep. González-Colón). The fact that Plaintiffs were unable to effectively lobby against the approval Section 12616 cannot be remedied by a court of law as it involves a political task delegated to the political branches of government. In this respect, the Court reminds Plaintiffs that "[t]he entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself *about the particular policies that affect his destiny*." Atkins v. Parker, 472 U.S. 115, 131 (1985) (emphasis added). More so, despite the undemocratic predicament existing in the Commonwealth of Puerto Rico, the utter lack of consent of the governed *per se* does not violate the Constitution. See Pedro-Vidal, 371 F. Supp. 3d at 59.

On the other hand, Plaintiff Club Gallístico also avers that Section 12616 amendments infringe their substantive Due Process cultural right to "cockfighting." (Docket No. 38; 53). As the court already

pointed out, such right does exist under our constitutional framework and where there "is no fundamental right or suspect classification involved" a rational basis test shall be applied. Hammond v. United States, 786 F.2d 8, 13 (1st Cir. 1986). Once again, Section 12616 complies with the requirements for this easily-met judicial scrutiny. The Court notes that Plaintiffs presented an "equal protection" claim pursuant to the Due Process Clause, yet barely develop it in their motions and reply. As discussed at the beginning of this Opinion and Order, this action, if anything, illustrates an equal treatment before the law, rather than an unequal one.

c. Right to Travel

Plaintiff Club Gallístico contend that under Section 12616 its members will not be able to travel freely within the United States "to practice and perpetuate their culture" (Docket No. 34 at 56). Although the Constitution protects a right to travel interstate and abroad, it is not an absolute constitutional guarantee. This right does not entail a fundamental right to travel for an illicit purpose. See Hoke v. United States, 227 U.S. 308, 320-323 (1913). See also Jones v. Helms, 452 U.S. 412, 418-19 (1981). Following the approval of these amendments, any travel involving live-birds, or sharp instruments intended for fighting, shall constitute an unlawful act, outside of any constitutionally protected activity.

D. Takings Clause

Finally, Plaintiffs put forward that the prohibition takes their "real and personal property without just

compensation" and that they are "no longer able to maintain, support, or sell their gamecocks because these breeds are considered by the market to be useless for any non-cockfighting purpose." (Docket 34 at 57). Moreover, Plaintiffs argue that their cockpits "are no longer able to be maintained, supported, or sold at their true value as these properties exist and are regulated for the specific purpose of cockfighting." Id. at 58. As to this specific allegation, Plaintiff Club Gallístico adds objection to Defendants' cross-motion that they "should have been on notice that this prohibition was coming and that their investments carried some risks." (Docket 57 at 34).

To analyze this contention, the Court need only assess whether the Section 12616 amendments constitute reasonable exercise of Congress' police power even if they substantially have the effect of reducing the value of certain property or prohibiting the most beneficially economic use of said property. See Philip Morris, Inc. v. Reilly, 312 F.3d 24, 33 (1st Cir. 2002); Andrus v. Allard, 444 U.S. 51 (1979). In Andrus, the Supreme Court considered the Eagle Protection Act and the Migratory Bird Treaty Act which, among other things, made it unlawful to possess or transport bald or golden eagles or to engage in such activities with respect to migratory birds. As a general norm, the Supreme Court reiterated that "[t]he Takings Clause . . . preserves governmental power to regulate, subject only to the dictates of justice and fairness." Id. at 65 (quotation marks omitted). Under this premise it held that the simple prohibition of the sale of lawfully acquired property did not amount to a Fifth Amendment's taking violation. Like the Supreme

Court's reasoning in Andrus, in the present case, Section 12616 does not violate the Takings Clause. Even if these recent amendments prevent the most profitable use of Plaintiffs' properties because their value is reduced, this does not necessarily equate to a taking.

As to Plaintiff Club Gallístico's "investment-backed expectation" argument, this Court highlights that: "Those who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." Connolly v. Pension Ben. Guar. Corp., 475 U.S. 211, 227 (1986); see also Puerto Rico Tel. Co. v. Telecommunications Regulatory Bd. of Puerto Rico, 189 F.3d 1, 17 (1st Cir. 1999). As Plaintiffs themselves affirm, live-bird fighting venture have been a highly regulated industry in the Commonwealth. (Docket No. 34 at 12).

E. Economic Impact

The Court considers necessary to address a central position to Plaintiffs and several *amici* briefs, notably that of the Commonwealth's Senate: the alleged economic impact that the live-bird fighting prohibition could have in the Commonwealth's already precarious economy. The cockfighting industry injects $65 million annually into the Commonwealth's economy and generates a total of 11,134 direct, indirect and induced

jobs. See Plaintiffs' Economic Impact Study of the Cockfighting Report (March 2019) (Docket No. 2-4).[14]

The Court clearly understands the dire economic impact that the cockfighting ban may have. However, without a valid legal ground, a federal court simply cannot sit as a "super-legislator" to amend or repeal the work of Congress. See City of New Orleans v. Dukes, 427 U.S. 297, 303, (1976) ("[T]he judiciary may not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines.") As discussed throughout this Opinion and Order, the Section 12616 amendments meet the rational basis standard; a judicial scrutiny which "is not a license for courts to judge the wisdom, fairness or logic of legislative choices." Heller, 509 U.S. at 319.

F. Conclusion

The Court hereby **DENIES** Plaintiffs Club Gallístico and others' Motion for Summary Judgment (Docket No. 34) and **GRANTS** the United Sates' Cross-Motion for Summary Judgment. (Docket No. 38). The Court further holds that it will not grant any stay pending the parties' appeals before the First Circuit. Judgment shall be entered accordingly.

SO ORDERED.

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[14] Similarly, according to the Senate, the cockfighting industry "has an impact of about eighteen (18) million dollars on the local economy and creates over twenty thousand (20,000) direct and indirect jobs." (Docket No. 60 at 6).

In San Juan, Puerto Rico this 28th of October, 2019.

s/ Gustavo A. Gelpí
GUSTAVO A. GELPI
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO

CIVIL NO. 19-1481 (GAG); (consolidated with Civil No. 19-1739 (GAG))

[Filed October 29, 2019]

CLUB GALLISTICO DE PUERTO RICO INC. et al.,	)
Plaintiffs,	)
v.	)
UNITED STATES OF AMERICA et al.,	)
Defendants.	)

JUDGMENT

Pursuant to the Court's Opinion and Order at Docket No. 77, judgment is hereby entered **DISMISSING** the instant action in favor of Defendant United States and others.

SO ORDERED.

In San Juan, Puerto Rico this 28th of October, 2019.

s/ Gustavo A. Gelpí
GUSTAVO A. GELPI
United States District Judge

APPENDIX D

7 U.S.C.A. § 2156

§ 2156. Animal fighting venture prohibition

Effective: February 7, 2014 to December 19, 2019

(a) Sponsoring or exhibiting an animal in, attending, or causing an individual who has not attained the age of 16 to attend, an animal fighting venture

(1) Sponsoring or exhibiting

Except as provided in paragraph (3), it shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture.

(2) Attending or causing an individual who has not attained the age of 16 to attend

It shall be unlawful for any person to--

(A) knowingly attend an animal fighting venture; or

(B) knowingly cause an individual who has not attained the age of 16 to attend an animal fighting venture.

(3) Special rule for certain State[1]

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 under this subsection for a person 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.

(b) Buying, selling, delivering, possessing, training, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture.

(c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any instrumentality of interstate commerce for commercial speech for purposes of advertising an animal, or an instrument described in subsection (e), for use in an animal fighting venture, promoting[2] or in any other manner furthering an animal fighting

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[1] So in original. Probably should be "States".

[2] So in original. Probably should be preceded by "or".

venture except as performed outside the limits of the States of the United States.

(d) Violation of State law

Notwithstanding the provisions of subsection (c), the activities prohibited by such subsection 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.

(e) Buying, selling, delivering, or transporting sharp instruments for use in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

(f) Investigation of violations by Secretary; assistance by other Federal agencies; issuance of search warrant; forfeiture; costs recoverable in forfeiture or civil action

The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under

cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate judge within the district wherein the animal sought is located. Any United States marshal or any person authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this subsection. Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct. Costs incurred for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals (1) if he appears in such forfeiture proceeding, or (2) in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

(g) Definitions

In this section--

(1) the term "animal fighting venture" means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment, except that the term "animal fighting venture" shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal;

(2) the term "instrumentality of interstate commerce" means any written, wire, radio, television or other form of communication in, or using a facility of, interstate commerce;

(3) the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;[3]

(4) the term "animal" means any live bird, or any live mammal, except man.

(h) Relationship to other provisions

The conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this chapter as a dealer, exhibitor, or otherwise.

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[3] So in original. The word "and" probably should appear.

(i) Conflict with State law

(1) In general

The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder.

(2) Omitted

(j) Criminal penalties

The criminal penalties for violations of subsection (a), (b), (c), or (e) are provided in section 49 of Title 18.

APPENDIX E

7 U.S.C.A. § 2156

§ 2156. Animal fighting venture prohibition

Effective: December 20, 2019

(a) Sponsoring or exhibiting an animal in, attending, or causing an individual who has not attained the age of 16 to attend, an animal fighting venture

(1) Sponsoring or exhibiting

It shall be unlawful for any person to knowingly sponsor or exhibit an animal in an animal fighting venture.

(2) Attending or causing an individual who has not attained the age of 16 to attend

It shall be unlawful for any person to--

(A) knowingly attend an animal fighting venture; or

(B) knowingly cause an individual who has not attained the age of 16 to attend an animal fighting venture.

(b) Buying, selling, delivering, possessing, training, or transporting animals for participation in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, possess, train, transport, deliver, or receive any animal for purposes of having the animal participate in an animal fighting venture.

(c) Use of Postal Service or other interstate instrumentality for promoting or furthering animal fighting venture

It shall be unlawful for any person to knowingly use the mail service of the United States Postal Service or any instrumentality of interstate commerce for commercial speech for purposes of advertising an animal, or an instrument described in subsection (d), for use in an animal fighting venture, promoting[1] or in any other manner furthering an animal fighting venture except as performed outside the limits of the States of the United States.

(d) Buying, selling, delivering, or transporting sharp instruments for use in animal fighting venture

It shall be unlawful for any person to knowingly sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.

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[1] So in original. Probably should be preceded by "or".

(e) Investigation of violations by Secretary; assistance by other Federal agencies; issuance of search warrant; forfeiture; costs recoverable in forfeiture or civil action

The Secretary or any other person authorized by him shall make such investigations as the Secretary deems necessary to determine whether any person has violated or is violating any provision of this section, and the Secretary may obtain the assistance of the Federal Bureau of Investigation, the Department of the Treasury, or other law enforcement agencies of the United States, and State and local governmental agencies, in the conduct of such investigations, under cooperative agreements with such agencies. A warrant to search for and seize any animal which there is probable cause to believe was involved in any violation of this section may be issued by any judge of the United States or of a State court of record or by a United States magistrate judge within the district wherein the animal sought is located. Any United States marshal or any person authorized under this section to conduct investigations may apply for and execute any such warrant, and any animal seized under such a warrant shall be held by the United States marshal or other authorized person pending disposition thereof by the court in accordance with this subsection. Necessary care including veterinary treatment shall be provided while the animals are so held in custody. Any animal involved in any violation of this section shall be liable to be proceeded against and forfeited to the United States at any time on complaint filed in any United States district court or other court of the United States for any jurisdiction in which the animal is found and

upon a judgment of forfeiture shall be disposed of by sale for lawful purposes or by other humane means, as the court may direct. Costs incurred for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals (1) if he appears in such forfeiture proceeding, or (2) in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.

(f) Definitions

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> **(1)** the term "animal fighting venture" means any event, in or affecting interstate or foreign commerce, that involves a fight conducted or to be conducted between at least 2 animals for purposes of sport, wagering, or entertainment, except that the term "animal fighting venture" shall not be deemed to include any activity the primary purpose of which involves the use of one or more animals in hunting another animal;
>
> **(2)** the term "instrumentality of interstate commerce" means any written, wire, radio, television or other form of communication in, or using a facility of, interstate commerce;
>
> **(3)** the term "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States;[2]

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[2] So in original. The word "and" probably should appear.

(4) the term "animal" means any live bird, or any live mammal, except man.

(g) Relationship to other provisions

The conduct by any person of any activity prohibited by this section shall not render such person subject to the other sections of this chapter as a dealer, exhibitor, or otherwise.

(h) Conflict with State law

(1) In general

The provisions of this chapter shall not supersede or otherwise invalidate any such State, local, or municipal legislation or ordinance relating to animal fighting ventures except in case of a direct and irreconcilable conflict between any requirements thereunder and this chapter or any rule, regulation, or standard hereunder.

(2) Omitted

(i) Criminal penalties

The criminal penalties for violations of subsection (a), (b), (c), or (d) are provided in section 49 of Title 18.

APPENDIX F

AGRICULTURE IMPROVEMENT ACT OF 2018, PL 115-334, December 20, 2018

SEC. 12616 EXTENDING PROHIBITION ON ANIMAL FIGHTING TO THE TERRITORIES.

(a) IN GENERAL.—Section 26 of the Animal Welfare Act (7 U.S.C. 2156) is amended—

(1) in subsection (a)—

<< 7 USCA § 2156 >>

(A) in paragraph (1), by striking "Except as provided in paragraph (3), it" and inserting "It"; and

<< 7 USCA § 2156 >>

(B) by striking paragraph (3);

<< 7 USCA § 2156 >>

(2) by striking subsection (d); and

<< 7 USCA § 2156 >>

<< 39 USCA § 3001 >>

(3) by redesignating subsections (e), (f), (g), (h), (i), and (j) as subsections (d), (e), (f), (g), (h), and (i), respectively.

<< 7 USCA § 2156 >>

(b) USE OF POSTAL SERVICE OR OTHER INTERSTATE INSTRUMENTALITIES.—Section 26(c) of the Animal Welfare Act (7 U.S.C. 2156(c)) is amended by striking "(e)" and inserting "(d)".

<< 7 USCA § 2156 >>

(c) CRIMINAL PENALTIES.—Subsection (i) of section 26 of the Animal Welfare Act (7 U.S.C. 2156), as redesignated by section 2(3), is amended by striking "(e)" and inserting "(d)".

<< 18 USCA § 49 >>

(d) ENFORCEMENT OF ANIMAL FIGHTING PROHIBITIONS.—Section 49(a) of title 18, United States Code, is amended by striking "(e)" and inserting "(d)".

<< 7 USCA § 2156 NOTE >>

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is one year after the date of the enactment of this Act.