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THE NEW JERSEY SUPREME COURT DISTINGUISHES THE
HUMANE TREATMENT OF ANIMALS AND ROUTINE
HUSBANDRY PRACTICES IN NEW JERSEY SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS V. NEW JERSEY
DEPARTMENT OF AGRICULTURE

JULIE M. MCGILL*

In New Jersey Society for Prevention of Cruelty to Animals v. New
Jersey Department of Agriculture, the New Jersey Society for Prevention of
Cruelty to Animals (hereinafter “NJSPCA”) and other entities challenged
regulations adopted by the New Jersey Department of Agriculture
(hereinafter “Department”) governing the treatment of domestic livestock.¹
A significant number of organizations and individuals became involved in
either the Department’s process of creating the regulatory scheme or in the
suit itself, demonstrating the societal import of the issues surrounding the
treatment of farm animals.

Regardless of familiarity with animal cruelty laws or standards
governing the treatment of farm animals, most people believe that animals,
even those raised for slaughter, should be treated humanely. Indeed, “[i]t
has long been the public policy of this country to avoid unnecessary cruelty
to animals.”² It is such public policy that likely drew the scrupulous
attention of the New Jersey Supreme Court.

This Comment, first, addresses the context in which the New Jersey
Department of Agriculture promulgated the regulations. The legal
background of the case is followed by a history of the dispute between the
New Jersey Department of Agriculture and the NJSPCA. Then, the
Comment analyzes the decision of the New Jersey Supreme Court in two
sections: (1) the court’s limited review of final agency actions, and (2) the
court’s holding. Finally, Section IV addresses the implications of the
decision.

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College of Law.
¹ N.J. Soc’y for Prevention of Cruelty to Animals v. N.J. Dep’t of Agric., 955 A.2d 886 (N.J.
2008).
² Humane Soc’y of Rochester & Monroe County for Prevention of Cruelty to Animals, Inc.
I. LEGAL BACKGROUND

In 1996, the New Jersey Legislature delegated to the New Jersey Department of Agriculture the authority to promulgate regulations and standards “relating to the care and welfare of domestic livestock.”

The Legislature directed the Department to be guided by the principle that the treatment of farm animals should be “humane” and consistent with the existing statutory standards that define animal cruelty.

Subsequently, the Legislature afforded the NJSPCA the continuing capacity to enforce the animal cruelty laws.

The Department undertook a lengthy investigatory process while creating these regulations. Before the final draft of the regulation was adopted, the Department received, and responded to, thousands of comments and objections. Soon thereafter, animal protection organizations, farmers, consumers, and citizens joined the NJSPCA in a suit against the Department to challenge the regulations.

II. CASE HISTORY

The regulations promulgated by the Department were first challenged before the Appellate Division of the Superior Court of New Jersey in July 2005. That Court rejected Petitioners’ arguments and sustained the adopted regulations, relying “on the presumption of reasonableness afforded to acts of administrative agencies.” In addition, the Appellate Division afforded deference to the Department, recognizing its scientific and technical expertise on the subject matter.

Petitioners then appealed to the New Jersey Supreme Court asserting the Appellate Division failed to recognize that the regulations authorized the continuation of inhumane practices. The Court “granted leave to a number of other interested individuals and entities to file briefs as amicus curiae.” Petitioners relied on the specific language of the “humane” standard adopted by the Legislature. According to Petitioners, the Legislature adopted the “humane” standard with the intent that the

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4 Id.
5 Id. at 890.
6 Id. at 900.
7 Id. at 892–93.
8 Id. at 893, n.6.
9 Id. at 893.
10 Id. at 893–94.
11 Id. at 894.
12 Id. at 896.
Department would "consider separately whether any particular practice, even if commonly or routinely utilized, is in fact humane."

Petitioners attacked the regulations on multiple grounds. First, Petitioners argued the regulations created an unjustifiable exemption for "routine husbandry practices," essentially permitting as "humane" any animal husbandry practice taught at educational institutions. They suggested that the creation of such an exemption was "an impermissible delegation of the Department's authority." In addition, Petitioners proposed that the Department failed to analyze the curricula of these institutions to ensure that the practices taught were humane. Such a failure, according to Petitioners, meant that "the Department acted without an essential basis in the record, resulting in the adoption of regulations not entitled to the court's deference."

Petitioners also challenged undefined language in the standards, such as "minimize pain," which failed to provide sufficient guidance to the agencies responsible for enforcing the regulations. Finally, Petitioners suggested that a significant number of practices permitted by the regulations were not consistent with the Department's definition of "humane." As a result of the regulations' inadequacies, Petitioners requested that the New Jersey Supreme Court invalidate the regulatory scheme adopted by the Department in its entirety.

III. ANALYSIS OF THE NEW JERSEY SUPREME COURT'S DECISION

A. The Court's Limited Review

The Court began its review of the Department of Agriculture's regulations by noting the deference afforded to an agency's final actions and regulations. Appellate courts generally reverse an agency's actions only "if they are arbitrary, capricious or unreasonable." Further, an appellate court may invalidate agency regulations when: (1) the regulations violate the legislative policies underlying the enabling act, (2) the agency bases an action on findings that are not supported by substantial evidence in the record, or (3) the agency clearly errs in applying the legislative policies to the facts.

13 Id. at 894–95.
14 Id. at 895.
15 Id.
16 Id.
17 Id.
18 Id.
19 Id.
20 Id. at 897.
21 Id. (quoting Henry v. Railway State Prison, 410 A.2d 686, 690 (N.J. 1980)).
22 Id. (quoting In Re Rulemaking, N.J.A.C. 10:82-1.2, 566 A.2d 1154, 1161 (N.J. 1989)).
Mindful of this standard of review, the court analyzed the structure and substance of the Department’s regulations. The subchapters of the regulations contained standards regarding specific kinds of domestic livestock, ranging from cattle and swine to rabbits and poultry. Each subchapter set forth general standards on raising farm animals, including regulations governing feeding, watering, marketing, and providing care and treatment. Subchapters of the regulations also contain exceptions permitting certain practices if “performed by ‘knowledgeable individuals in a sanitary manner in a way to minimize pain,’ and authorized other forms of treatment of domestic livestock that qualify as ‘routine husbandry practices’ defined in N.J.A.C. 2:8-1.2.” Any act included in these “safe harbor” provisions is permitted if “performed in accordance with the standards that those provisions impose . . . because, by definition, they [were] not acts of cruelty.”

The Court also reviewed the record compiled by the Department. The record evidenced that the Department took into account the views of farmers and other professionals concerned with the economics of agriculture as well as the views of animal rights organizations and animal welfare activists. The record included scientific studies, animal expert publications, and comments to the proposed regulations. The extensive record proved that the Department “took seriously its charge to consider all aspects of the questions about the welfare of domestic livestock.” Nevertheless, the Court held that composing a thick record and responding to public objections would not suffice to sustain the agency’s actions if the regulations were not supported by the evidence in the record, or if the regulations fell short of the legislative mandate.

B. The Court’s Holdings

(1) Petitioners’ General Attack

Petitioners, first, launched a broad attack on the regulations adopted by the Department, arguing that the regulations were unsuccessful in achieving the Legislature’s primary goal. Petitioners asserted that the Department failed to recognize the distinction between the legislative

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23 Id. at 898.
24 id.
25 Id. at 898–99.
26 id. at 900.
27 id.
28 id.
29 id.
30 id. at 901.
31 id.
mandate to promulgate "humane" standards and a lesser standard that would permit animal husbandry practices simply because they were common or routine. Such a fundamental and pervasive failure would justify the court striking down the statutory scheme in its entirety.

Consequently, the power of the Court to invalidate the agency's statutory scheme depended upon either a conclusion that the Department failed to recognize the Legislature's objective of a "humane" touchstone, or a conclusion that the regulations in their entirety were arbitrary, capricious or unreasonable. The Court recognized that in order to invalidate the statutory scheme, it would need to find "an inherent flaw in the very process by which they were drafted and adopted or in the record that supports them."

The Court rejected the argument that the regulations were so flawed that they could not be sustained. First, the Court found the Department recognized its charge to ensure the humane treatment of farm animals, as distinguished from blindly protecting all animal husbandry practices because of their common character. Based on the Department's investigatory process, extensive record, and its attentiveness in responding to the comments and criticisms, the Court rejected Petitioners' general attack.

Second, the Court rejected Petitioner's argument because of their failure to do more than point to several examples of inhumane practices allowed by the regulations as evidence of the regulations' general defect. Although the Court found the evidence insufficient to justify invalidation of the regulations as a whole, it provided a prelude to its address of Petitioners' other challenges by acknowledging that "one or another of the specifically challenged practices within the regulations may individually fall short" on review.

(2) The Safe Harbor Provisions

Petitioners next attacked the "safe harbor" provisions, which protected domestic livestock techniques that meet the definition of "routine husbandry practices." Petitioners primarily objected to the expansive definition of "routine husbandry practices." Specifically, the definition

32 See id.
31 Id.
34 Id. at 902.
35 Id.
36 Id. at 901.
37 Id. at 902.
38 Id. at 903.
39 Id.
40 Id.
included "those techniques commonly taught by veterinary schools, land
grant colleges, and agricultural extension agents." Petitioners asserted
that this definition was overly broad and improperly delegated authority to
a "wide variety of institutions, each of which ha[d] become the arbiter of
which practices [were] humane."[42]

The Court responded by acknowledging the lack of evidence in the
record on whether the Department undertook a thorough analysis of the
curricula of these institutions. In fact, the Court acknowledged that clear
evidence demonstrated the Department’s complete failure to gather
curricula information until the case was appealed to the New Jersey
Supreme Court. Also evident was the Department’s lack of consideration
as to whether these institutions chose teaching particular techniques based
on their humane quality as opposed to their ability to maximize farm
productivity and profitability.[45]

Furthermore, the Court identified two inherent flaws in the "safe
harbor" provisions. First, the Court found it "significant that the
Legislature sought to exempt only 'humane' practices from prosecution
under the cruelty code."[47] This specific goal was markedly different from
the goal of many other states that have similar statutes. Other states
exempted "routine husbandry practices" or those that were commonly
accepted in the farming community from their cruelty codes, but the New
Jersey Legislature purposefully chose an alternate standard.[49]

Second, the Court found that "embrac[ing] wholesale any technique
as long as it [was] 'commonly taught' at any of these institutions [would be
an] impermissible subdelegation" for the Department. In addition, the
Court found it troublesome that the Department delegated its power to
entities with private interests that may be inconsistent with the welfare of
animals. According to the Court, the Department should have
investigated the teaching practices of these institutions and identified
whether a concern for animal welfare was present among their faculty or in
their curricula. Absent such an investigation, the record did not support a
finding that all of the practices taught at these institutions met the humane
standard.[53]

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41 Id. at 904 (citing N.J. ADMIN. CODE § 2:8-1.2 (West, Westlaw through Aug. 2009)).
42 Id.
43 Id. at 905.
44 Id.
45 Id. at 905–06.
46 Id at 906.
47 Id.
48 Id.
49 Id.
50 Id.
51 See id.
52 Id. at 906–07.
53 See id. at 907.
As a result, the Court held the Department had promulgated arbitrary and capricious regulations by adopting a broad definition of "animal husbandry practices," while compiling a record with insufficient evidence to support that decision.\textsuperscript{54} Therefore, the Court struck the definition of "routine husbandry practices" and declared each subsection of the regulations referring to them invalid.\textsuperscript{55}

(3) Challenges on Specific Husbandry Techniques

Petitioners last attacked the regulations asserting that several practices permitted by the regulations were "demonstrably inhumane and that the Department's authorization thereof [was] unsupported by sound science."\textsuperscript{56} Petitioners contended that these techniques caused animals pain and emotional distress while having little to no value.\textsuperscript{57} Petitioners opposed the following techniques: the tail docking of dairy cattle, castration of horses, cattle, and swine, de-beaking of turkeys and chickens, crating and tethering of cattle and veal calves, and toe-trimming of turkeys without anesthesia.\textsuperscript{58}

(a) Tail Docking

The Court, first, considered the practice of tail docking - the amputating of the bottom portion of a cow's tail.\textsuperscript{59} Petitioners argued that tail docking caused physical pain and hindered the cows ability to perform beneficial behaviors, such as chasing away flies with their tails, causing the cows distress during fly season.\textsuperscript{60} Petitioners insisted that tail docking could not possibly be "humane."\textsuperscript{61} The evidentiary record revealed that tail docking cattle was discouraged by the American and Canadian Veterinary Medical Associations, while any possible benefit of the practice suggested by the Department of Agriculture remained scientifically questionable.\textsuperscript{62} Therefore, the Court held that the portion of the regulations permitting this practice was arbitrary, capricious, and could not be upheld.\textsuperscript{63}

\textsuperscript{54} \textit{Id.}
\textsuperscript{55} \textit{Id.}
\textsuperscript{56} \textit{Id.}
\textsuperscript{57} \textit{Id.}
\textsuperscript{58} \textit{Id.}
\textsuperscript{59} \textit{Id. at 908.}
\textsuperscript{60} \textit{Id.}
\textsuperscript{61} \textit{Id.}
\textsuperscript{62} \textit{Id. at 909.}
\textsuperscript{63} \textit{Id.}
(b) Castration, De-Beaking and Toe-Trimming

Next, the Court considered several similar practices as a group, including the “castration of swine, horses, and calves, de-beaking of turkeys and chickens, and toe-trimming of turkeys.” Petitioners challenged these practices, alleging them to be unnecessary and severely painful, since each was performed without the use of anesthetics.

Evidence presented to the Court revealed that the foregoing practices are beneficial to both handlers and animals, because they reduce aggression among animals raised in close quarters. Despite these beneficial qualities, the Court stated that the issue was not “merely a matter of deciding whether the scientific evidence support[ed] the use of the procedures at all.” Rather, the issue before the Court was whether the evidence in the record was sufficient for the Department to permit these practices under the mandate of adopting regulations that ensure humane treatment of animals.

Based on the record, the Court concluded that the Department’s decision to permit these practices was neither arbitrary nor capricious. However, the Court found a significant flaw with the limitation used to ensure the “humane” performance of such procedures. The regulations permitted performance of these procedures only in a sanitary manner by a knowledgeable individual and only to minimize pain. However, no definitions of the terms “sanitary manner,” “knowledgeable individual,” or “minimize pain” were included in the regulations, nor were objective criteria provided to measure whether an individual was performing the procedure in accordance with the limitation.

Without adequate definitions of these terms, the Court held that this part of the regulations provided no standard. Believing the procedures could be performed in a “humane” manner, the Court did not suggest that they should not ever be permitted. Instead, the Court found that the Department “created an unworkable enforcement scheme” that lacked a standard to ensure the techniques were carried out in a humane way.
Finally, the Court considered Petitioners' attack on the Department's decision to permit the use of crates and tethering for swine and veal calves and the transportation of sick and downed animals. Petitioners contested the use of crates and tethering on the grounds that the techniques prevented the animals from moving freely. Petitioners pointed out the European Union's plan to phase out the use of crates and Florida's complete prohibition of all crate use. In response, the Department successfully pointed to a number of reasons supporting its decision to permit these practices: the decrease in the spread of disease, lessened occurrence of fecal contamination, and reduced stress imposed on animals during health examinations.

Despite the controversy surrounding crating and tethering, the Court found the section permitting this practice neither arbitrary nor capricious and supported by credible evidence. The Court opined the Department properly used its expertise to consider a variety of studies on these practices before making its decision and successfully balanced concerns for the humane treatment of animals with the interests of farmers, whose livelihood could be threatened by the prohibition of these practices.

Last, Petitioners challenged the section of the regulations permitting the transportation of sick and downed animals, arguing that animals suffered pain when being loaded onto transport trucks. This section (1) required sick or injured cattle to be treated promptly or euthanized humanely; and (2) limited the allowed methods of euthanasia. In addition, this section prohibited transporting downed cattle to the livestock markets and dragging animals while conscious, even if the animal would ultimately be slaughtered or euthanized.

The Court accepted the Department's view that farmers should enjoy some flexibility and autonomy in determining when and where slaughtering took place. The strict limits imposed on euthanasia by the regulations led the Court to hold that the Department's decision to allow the transportation of downed and sick animals was not arbitrary or capricious.

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75 Id. at 913, 915.
76 Id. at 913.
77 Id. (citing FLA. CONST. art. X, § 21; Council Directive 2001/88/EC, 2001 O.J. (L 316)).
78 Id. at 914.
79 See id. at 915.
80 Id.
81 Id.
82 Id.
83 Id. at 916.
84 Id.
85 Id.
IV. IMPLICATIONS

People have different beliefs on how animals should be treated. Even from an objective point of view, it is easy to see that blanket exemptions for routine husbandry practices in animal cruelty codes result in a disparity of protection for farm animals compared to the standards of treatment imposed for other animals.

The most significant impact of New Jersey Society for Prevention of Cruelty to Animals will likely result from the distinction the Court made between humane animal husbandry practices and those that are simply common and routine. In granting the Department of Agriculture the authority to promulgate regulations relating to the treatment of domestic livestock, the New Jersey Legislature chose to adopt a higher standard of protection than many other state legislatures. Regulations focusing on individual techniques and whether they are humane afford animals a higher level of protection than regulations that blindly perpetuate the use of techniques merely because they are common.

It has been suggested that farm animals are inadequately protected under federal law against inhumane animal husbandry practices. Additionally, the case at issue demonstrates that state laws may not appropriately protect domestic livestock from inhumane treatment either. This inadequate protection likely stems from the competing goals of animal cruelty prevention and farming profitability. By choosing the higher standard of protection, the New Jersey Legislature demonstrated its commitment to ensuring the welfare of farm animals. While the immediate effect of the Court’s ruling will be limited to New Jersey, it is foreseeable that other state legislatures will follow the New Jersey Legislature’s lead in insisting on a humane standard. As a result of this decision, other states may feel pressure to revise their animal cruelty codes to adequately protect domestic livestock.

V. CONCLUSION

The decision of the New Jersey Supreme Court in New Jersey Society for Prevention of Cruelty to Animals puts the State of New Jersey one step ahead in the development of animal cruelty law. Many other states, such as Pennsylvania and Colorado, continue to allow common animal husbandry practices without consideration as to whether those practices are humane. Overlooking the welfare of animals, with an eye

87 See COLO. REV. STAT. § 18-9-201.5(1) (2008); 18 PA. CONS. STAT. § 5511(c)(3) (LEXIS through 2009).
towards productivity, appears to be the current trend. While administrative agencies must consider productivity when creating animal cruelty codes, the best approach balances the economics of the agricultural industry with the interests of animal welfare groups and the animals themselves. New Jersey has done so, and, therefore, has set the standard for other states to follow.