STATE OF FLORIDINA
COURT OF APPEALS
DIVISION THREE

Cr. No. 08-1028

THE PEOPLE OF THE STATE OF FLORIDINA,

Respondent/Cross-Appellant

v.

JEFFREY WILLIAMS,

Appellant/Cross-Respondent

ON APPEAL FROM JUDGMENT OF
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF STINSONIA

BRIEF FOR RESPONDENT/CROSS-APPELLANT, THE PEOPLE OF THE STATE OF FLORIDINA

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STATEMENT OF JURISDICTION

This is an appeal from a final order of the United States District Court for the District of Stinsonia. This Court's jurisdiction is based on 28 U.S.C. § 1291 (1982).

STANDARD OF REVIEW

The standard of review for an appellate court examining a district court's interpretation of a statute is *de novo*. *Tyler v. Douglas*, 280 F.3d 116, 121 (2d Cir. Vt. 2001).

STATEMENT OF THE ISSUES

I. In light of clear congressional intent to exclude chickens from the Twenty-Eight Hour Law and the deference owed to the USDA's interpretation of the law, does the term "animals" in the Twenty-Eight Hour Law exclude chickens?

II. Does the Twenty-Eight Hour Law preempt the Floridina anti-cruelty statute, where there is no clear and manifest intent by Congress for such preemption and where the regulation at issue is a power traditionally reserved for the States?

STATEMENT OF THE CASE

A. Procedural History

On November 11, 2008, the District Court for the District of Stinsonia found Appellant/Cross-Respondent, Jeffery Williams, guilty of forty-five counts of Floridina's Cruelty to Animals Law, 8 FRS § 621. Williams filed a timely appeal and argued that his conduct was subject to the Twenty-Eight Hour Law, 49 U.S.C. § 80502. He further argued that his conviction should be overturned on the grounds that application of the Floridina anti-cruelty law violates the Supremacy Clause of the United States Constitution. The State of Floridina filed a timely cross-

appeal of the District Court's ruling that the transportation of chickens is covered by the Twenty-Eight Hour Law.

B. Statement of the Facts

Jeffery Williams transports live birds in large tractor-trailer trucks. (R. 1.) Most of these birds are "spent hens", chickens that were formerly used in egg production and that no longer have any obvious market value. (R. 1.) Williams sells the chickens to the USDA; the USDA uses them for food in school lunch programs. (R. 1.) On every trip, Williams manages to pack approximately ten thousand chickens into his tractor-trailer truck. (R. 2.) His trips always traverse two or more states, never exceed twenty-four hours, and are always non-stop. (R. 2.) The chickens are without food, water, ventilation, and veterinary care for the duration of the ride. (R. 2.) Fifteen percent of the chickens are typically dead upon Williams' arrival at his destination. (R. 2.)

While traveling through the State of Floridina, a Floridina highway patrol officer stopped Williams and discovered a large number of dead chickens, live chickens standing on dead chickens, and chickens unable to stand. (R. 2.) The officer arrested Williams for cruelty to animals in violation of Floridina's Cruelty to Animals Law, 8 FRS § 621(a)-(d). (R. 2.)

The State of Floridina charged Williams with forty-five counts of cruelty to animals. (R. 2.) Williams entered into a stipulation of facts with the prosecutor and raised the sole defense that the State was barred from prosecuting him because his conduct complied with 49 U.S.C. § 80502 and was therefore humane. (R. 2.) The State argued that (1) the Twenty-Eight Hour Law does not bar prosecutions under the Floridina anti-cruelty law and (2) even if there was preemption with respect to other animals, chickens are not "animals" within the purview of the Twenty-Eight Hour Law. (R. 2-3.)

SUMMARY OF THE ARGUMENT

The District Court erred in finding that chickens are "animals" within the scope of the Twenty-Eight Hour Law, for the court considered the issue without regard to congressional intent, the USDA's longstanding statutory interpretation, and the deference owed to that interpretation under *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984). Because chickens are not "animals" within the scope of the Twenty-Eight Hour Law, even if the Twenty-Eight Hour Law preempts Floridina's anti-cruelty law with respect to other animals, there is no preemption with respect to chickens.

The District Court correctly concluded that none of the preemption doctrines apply to bar Williams' indictment or prosecution under the Floridina Animal Cruelty Law. Congress cannot cavalierly pre-empt state law, especially those exercising a historical state police power, in our case the regulation of animals. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996). By passing the Twenty Eight Hour Law, Congress legislated in a field that the States have traditionally occupied, so there is an assumption that the historic police powers are not to be superseded without a clear and manifest purpose. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). There is no clear and manifest intent by Congress to preempt state anti-cruelty statutes under any of the four types of preemption analyses.

The State respectfully requests that the Third Division of the Floridina Court of Appeals reverse the District Court's finding that chickens are "animals" within the purview of the Twenty-Eight Hour Law and affirm the District Court's finding that the Twenty-Eight Hour Law does not preempt Williams' indictment or prosecution under Floridina's anti-cruelty law.

ARGUMENT

I. CHICKENS ARE NOT "ANIMALS" WITHIN THE SCOPE OF THE TWENTY-EIGHT HOUR LAW.

A. The District Court Erred in Interpreting the Twenty-Eight Hour Law for the Court Did Not Give Deference to the United States Department of Agriculture's Understanding of the Law.

1. The United States Department of Agriculture is responsible for enforcing the Twenty-Eight Hour Law and interprets the law to exclude chickens.

According to the Twenty-Eight Hour Law, truckers:

> transporting animals from a place in a State . . . of the United States through or to a place in another State . . ., may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest . . . . Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. 49 U.S.C. § 80502(a)(1), (b).

While not specifically indicated by the current text of the statute, the United States Department of Agriculture (USDA) is responsible for enforcing the Twenty-Eight Hour Law. In the 1994 reenactment of the law, Congress substituted the words "it shall be the duty of United States attorneys to prosecute all violations . . . reported by the Secretary of Agriculture, or which come to their notice or knowledge by other means", 45 U.S.C. § 74 (1906), with "[o]n learning of a violation, the Attorney General shall bring a civil action to collect the penalty". § 80502(d); *See also* 7 C.F.R. § 2.22(a)(2)(viii) (2005) (the Under Secretary for Marketing and Regulatory Programs is responsible for exercising the functions of the Secretary of Agriculture under the Twenty-Eight Hour Law). In its House and Senate Reports Congress unequivocally established that the 1994 repeal and reenactment of the Twenty-Eight Hour Law effected no substantive changes to the statute.[1] H.R. Rep. No. 103-180, at 1, 3, 5 (1993); S. Rep. No. 103-265, at 1, 3, 5

[1] The House Report states: "The purpose of H.R. 1758 is to restate in comprehensive form, without substantive change, certain . . . laws related to transportation . . . and to make other technical improvements in the Code . . . . In making changes in the language, precautions have been taken against making substantive changes in the law . . . . It is sometimes feared that mere changes in terminology and style will result in changes in substance or impair the

(1994). The Secretary of Agriculture, therefore, continues to hold the responsibility of enforcing the Twenty-Eight Hour Law.

The Honorable Jamie Burrito's Memorandum Opinion indicates that the Department of Agriculture has not advocated for or against the Twenty-Eight Hour Law's inclusion of chickens. (R. 6-7.) While the USDA has remained silent with respect to the instant case, it is indisputable that the Department considers chickens to be outside the ambit of the law.

The regulations issued by the Department of Agriculture elucidate the USDA's understanding of the meaning of "animals" within the purview of the Twenty-Eight Hour Law. While the regulations detail the appropriate amounts of feed to be administered at the first and subsequent feeding stations for cattle, dairy calves, horses, mules, sheep, goats, lambs, kids, and swine, the regulations make no mention of chickens. 9 C.F.R. § 89.1 (1963). Given the vast number of chickens in interstate commerce,[2] it would be strange for the USDA to list amounts of feed appropriate for a variety of quadrupeds, but to exclude the appropriate amount of feed for chickens, while, nevertheless, including chickens within the purview of the Twenty-Eight Hour Law. This is particularly true since chickens are birds with needs distinct from those of the listed quadrupeds. Additionally, according to a report by the American Law Division,[3] when the

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precedent value of earlier judicial decisions and other interpretations. This fear might have some weight if this were the usual kind of amendatory legislation when it can be inferred that a change of language is intended to change substance. In a codification law, however, the courts uphold the contrary presumption: the law is intended to remain substantively unchanged."

[2] According to the Humane Society of the United States, birds comprise 95% of the 10 billion land animals killed every year in the United States. http://www.hsus.org/farm/resources/pubs/gve/for_the_animals.html. While the State has not been able to determine the number of chickens transported annually, the State does not dispute that the number is large.

[3] This report can be found at: http://www.hsus.org/web-files/PDF/legislation/CRS-07-animal-protection-fed-statutes.pdf. The USDA's statement was made by W. Ron DeHaven, Administrator, USDA, to Peter A. Brandt, Esq., The Humane Society of the United States, on September 22, 2006 and was in response to a petition from the Humane Society of the United States (HSUS) and other animal protection organizations, primarily requesting that the USDA include trucks within the coverage of the Twenty-Eight Hour Law. HSUS' petition can be found at: http://www.hsus.org/web-files/PDF/farm/28hr-petition-Mon-Oct-3.pdf. The petition encourages the USDA to construe "animals" to include chickens.

USDA recognized that the plain meaning of "vehicle" includes trucks, the Department stated, "[t]he Twenty-Eight Hour Law was never construed as being applicable to poultry, and . . . USDA does not intend to change this longstanding interpretation of the statute". Henry Cohen, *Brief Summaries of Federal Animal Protection Statues*, 27, American Law Division (Updated August 15, 2008).

2. The Court should apply the *Chevron* test to determine if the USDA's interpretation of the Twenty-Eight Hour Law is in accord with the law.

The Administrative Procedure Act sets the standard for judicial review of agency decisions.[4] 5 U.S.C. § 706(2)(A) (1966). When examining an agency's construction of a statute to determine whether it is in accord with the law, the court applies a two-prong test articulated by the United States Supreme Court in *Chevron, U.S.A., Inc. v. NRDC, Inc.* First, the court determines whether Congress has directly addressed the issue being litigated. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (1984). In making this determination the court is permitted to use the tools of statutory construction. *Chevron*, 467 U.S. at 843 n.9. If Congress has addressed the issue, the court and the agency must carry out the unambiguously expressed intent of Congress. *Id.* at 842-843. However, if Congress has not addressed the issue, rather than impose its own interpretation, the court determines whether the agency's interpretation is based on a permissible statutory construction. *Id.* at 843.

B. <u>Under the Traditional Canons of Statutory Construction it is Clear That Congress Did Not Intend for the Twenty-Eight Hour Law to Apply to Chickens</u>.

1. As used within the context of the Twenty-Eight Hour Law, the term "animals" is ambiguous and, therefore, its plain meaning cannot control interpretation of the statute.

[4] The Administrative Procedure Act provides: "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

When interpreting a statute, the court must first determine whether the language in question has a plain and unambiguous meaning. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997). A statute is ambiguous when it is capable of being understood by reasonably well-informed persons in two or more different ways. *Allen v. Geneva Steel Co. (In re Geneva Steel Co.)*, 281 F.3d 1173, 1178 (10th Cir. 2002). In assessing whether the statutory language is ambiguous, the court does not limit its analysis to the language in question, but also examines the specific context in which the language is used, as well as the broader context of the statute as a whole.[5] *Robinson*, 519 U.S. at 341. If a statute is ambiguous, a court may look to the statute's legislative history for guidance. *Allen*, 281 F.3d at 1178.

In cases of statutory interpretation, the court generally ascribes the "ordinary or natural" meaning to undefined words. *Smith v. United States*, 508 U.S. 223, 228 (1993). However, as the Honorable Jamie Burrito recognized, the ordinary meaning of "animals" in the vernacular and in a scientific context often diverges from the meaning of the term in a legal context. (R. 5.) Although chickens fall within the dictionary and scientific definitions of "animal", courts and statutes do not always classify chickens as "animals". (R. 4-5.)

To illustrate, neither the Animal Welfare Act (AWA) nor the Humane Methods of Slaughter Act (HMSA) applies to chickens. The AWA specifically excludes birds "bred for use in research" from its definition of "animal", as well as "other farm animals, such as, but not limited to livestock or poultry". 7 U.S.C. § 2132(g)(1), (3) (2002). Although the HMSA makes no mention of chickens (referring only to "other livestock"), 7 U.S.C. § 1902 (1958), the HMSA is understood to exclude chickens. *Levine v. Conner*, 540 F. Supp. 2d 1113 (N.D. Cal. 2008).

[5] For example, in *Robinson v. Shell Oil Co.* the Supreme Court held the term "employees" ambiguous as used within Title VII of the Civil Rights Act of 1964; the term gave no indication as to whether it included former employees. The statute offered no qualifying language and while some sections of Title VII used the term to reference a group broader than current employees, other sections plainly referred to current employees.

Furthermore, while the Supreme Courts of Kansas and New York held chickens to be distinct from animals and to be properly classified as birds, *State of Kansas v. Claiborne*, 505 P.2d 732, 735 (Kan. 1973); *Clay v. New York C. R. Co.*, 224 A.D. 508, 511-512 (N.Y. App. Div. 1928), the Supreme Court of Hawaii held a gamecock to be an animal. *State v. Kaneakua*, 597 P.2d 590, 592 (Haw. 1979). Most importantly, neither the current text of the Twenty-Eight Hour Law, nor Title 49, offer any definitions or means of discerning whether the meaning of "animals" includes chickens. In sum, within the context of the Twenty-Eight Hour Law, the term "animals" is capable of being understood by reasonably well-informed persons in two or more different ways. *Allen*, 281 F.3d at 1178. The term is ambiguous and its plain meaning cannot control interpretation.

2. "Animals" must be understood within the context of the Twenty-Eight Hour Law's legislative history.

Should the court hold "animals" to have a plain meaning and to therefore include chickens, the plain meaning of the word cannot end the court's analysis for such a conclusion would render a result at odds with congressional intent. *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989).

At first glance it may appear that since the Twenty-Eight Hour Law has humanitarian roots, the non-application of the law to chickens defeats legislative intent and leaves the law a nullity.[6] The State does not contest the Twenty-Eight Hour Law's humanitarian origins.[7] Cong. Globe, 42nd Cong., 2d Sess. 4228 (1872). Indeed, courts have long understood the law's

[6] Note that in the wake of the USDA's 2006 decision that "vehicle" includes trucks the Twenty-Eight Hour Law has become an effective humanitarian law and aids in providing humane transportation to 50 million animals. http://www.hsus.org/farm/news/ournews/usda_reverses_28_hour_policy.html. The law, therefore, is hardly a nullity.

[7] For example, during the debates Senator Morrill (R-ME) observed, "There is no question at all, in the opinion of people who have been observant in this matter, that great inhumanity is practiced toward animals that are forwarded for a market; and in the very nature of the case, from the manner in which they are huddled together, especially in cars and steamboats, and by water-carriage, that must be so".

primary objective to be that of preventing cruelty to animals in transit. *Chicago & N. R. Co. v United States*, 246 U.S. 512, 517 (1918); *Walrath v. American R. E. Co.*, 217 A.D. 83, 87 (N.Y. App. Div. 1926); *McGinley v. Union P. R. Co.*, 263 N.W. 393, 398 (Neb. 1935). The law is generally understood to have the secondary objective of protecting the integrity of the nation's food supply.[8] Cong. Globe, 42nd Cong., 2d Sess. 4228; *United States v. Pere Marquette R. Co.*, 171 F. 586, 588 (C.C.D.N.Y. 1909).

Imposing the law's objectives on all living creatures, however, only serves to contravene congressional intent. Prior to the 1994 amendment, the Twenty-Eight Hour Law provided that, "cattle, sheep, swine, or other animals" shall not be transported from one state to another for more than twenty-eight hours without being unloaded for rest, water, and feeding. 45 U.S.C. § 71 (1906). The 1994 reenactment replaced "cattle, sheep, swine, or other animals" with "animals". 49 U.S.C. § 80502(a)(1). To argue that with the alteration Congress intended to encompass all animals (R. 6.) ignores pertinent legislative history. As indicated above, Congress repeatedly stated that the reenactment was not made with the intent of effecting substantive changes to the law. H.R. Rep. No. 103-180, at 1, 3, 5; S. Rep. No. 103-265, at 1, 3, 5.

It is presumed that Congress is aware of administrative and judicial interpretations of statutes. *Lorillard, Div. of Loew's Theatres, Inc. v. Pons*, 434 U.S. 575, 580 (1978). Therefore, when Congress reenacts a law without changing the law, Congress adopts the administrative and judicial interpretations of the law. *Lorillard*, 434 U.S. at 580. For example, in *Lorillard, Div. of Loew's Theatres, Inc. v. Pons* the Supreme Court held that although the Age Discrimination in Employment Act of 1967 (ADEA) does not contain provisions expressly

[8] As Judge Burrito noted in her Memorandum Opinion, Senator Thurman (D-OH) stated: "It is not simply mercy to the poor brute, although that of itself is sufficient with any right-hearted man; it is mercy to ourselves; mercy to the people who eat the flesh of these animals, which, when they are improperly transported, is unhealthy at the place of its destination, and almost or quite unfit for food".

granting a right to a jury trial in private civil actions for lost wages, a trial by jury is available when requested by one of the parties, for the Act's structure shows that Congress intended to grant such a right. The Court reasoned that since ADEA mandated that the Act be enforced in accordance with the "powers, remedies, and procedures" of the Fair Labor Standards Act, which had long been interpreted by courts to afford a right to a jury in private actions, ADEA must afford the right to a jury trial. *Id.* at 580-581.

In its 136-year history the Twenty-Eight Hour Law has never been understood to apply to chickens. In fact, in 1928 the Supreme Court of New York specifically excluded chickens from the law's reach: "the Federal Cruelty to Animals Act does not apply [to poultry]. Its provisions are confined to the transportation of animals in these words: 'cattle, sheep, swine, or other animals.' It does not apply to poultry; birds are not animals". *Clay*, 224 A.D. at 511-512. Since Congress is presumed to act with knowledge that the USDA and the high court of one state have categorically excluded chickens from the Twenty-Eight Hour Law's reach, the 1994 reenactment constitutes an affirmation of the law's exclusion of chickens.

In light of the unambiguous intention of the 103rd Congress to exclude chickens from the scope of the Twenty-Eight Hour Law, the facts and circumstances of the case satisfy the first prong of the *Chevron* test and the court should carry out the intentions of Congress by holding the Twenty-Eight Hour Law inapplicable to chickens.

C. Even if the Court Considers the Intentions of the Legislature Ambiguous, the Court Must Sustain the Department of Agriculture's Interpretation of the Twenty-Eight Hour Law for it is Based on a Reasonable Construction of the Statute.

1. The court should give deference to the Department of Agriculture's longstanding construction of the Twenty-Eight Hour Law.

In order for an agency's statutory interpretation to receive *Chevron* deference it is not necessary that an agency reach its interpretation through formal means, such as "notice and

comment" rulemaking. *Barnhart v. Walton*, 535 U.S. 212, 221-222 (2002); *See generally Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (holding that opinion letters, along with policy statements, agency manuals, and enforcement guidelines, are not entitled to *Chevron* deference; to the extent that they are able to persuade, such statements are entitled to respect). Rather, in determining whether an agency interpretation is entitled to *Chevron* deference, the court considers a variety of factors, including the length of time that the agency has employed the interpretation and the agency's consistency in holding the interpretation to be true. *Barnhart*, 535 U.S. at 221-222; *Good Samaritan Hosp. v. Shalala*, 508 U.S. 402, 417 (1993). Both of these factors are present with regard to the USDA's interpretation of the Twenty-Eight Hour Law; the USDA has a longstanding interpretation that the law excludes chickens and there is no evidence that the agency's interpretation has wavered. While the State maintains that in light of the 103rd Congress' reenactment of the Twenty-Eight Hour Law, congressional intent is unambiguous and the term "animals" leaves no implicit gap for the USDA to fill, the remainder of this brief sets forth an alternative analysis and analyzes the issue as if there were an implicit gap left in the law.

When Congress grants a government agency authority to oversee a congressionally created program, the management of the program requires that the agency devise rules to fill any implicit or explicit gaps left by Congress. *Chevron,* 467 U.S. at 843. In cases of an implicit gap, a court may not impose its own construction if the agency's interpretation of the statutory provision is reasonable. *Id.* at 844. The court need not find the agency's construction to be the only one it permissibly could have adopted and the agency's reading need not be the one that the court would have reached; it need only be reasonable. *Id.* at 843 n.11.

2. The statutory construction canon of *ejusdem generis* precludes the inclusion of chickens.

Since Congress did not intend to effect substantive changes with the 1994 reenactment of the Twenty-Eight Hour Law and since it has been established above that the plain meaning of "animals" does not control the Twenty-Eight Hour Law's interpretation, a proper analysis of the meaning of "animals" requires an examination of the former statute's language, which included "cattle, sheep, swine, or other animals" within the Twenty-Eight Hour Law's reach. 45 U.S.C. § 71. The principle of *ejusdem generis* dictates that when general words follow specific words in a statutory enumeration, the general words only incorporate those objects that are similar in nature to the objects referenced by the specific words. *Wash. State Dep't of Soc. & Health Servs. v. Guardianship Estate of Keffeler*, 537 U.S. 371, 384 (2003).

For example, when interpreting The National Motor Vehicle Theft Act, which provided: "[t]he term 'motor vehicle' shall include an automobile, automobile truck, automobile wagon, motor cycle, or any other self-propelled vehicle not designed for running on rails", the Supreme Court held the phrase, "any other self-propelled vehicle not designed for running on rails" to exclude aircraft. *McBoyle v. United States*, 283 U.S. 25 (1931). Justice Holmes reasoned that while it is etymologically possible to use the term "vehicle" to refer to aircraft, given the preceding words (automobile, truck, wagon, motor cycle) "a vehicle running on land" is the theme and the statute excludes aircraft. *McBoyle*, 283 U.S. at 26-27. Similarly, "cattle, sheep, swine, or other animals" constitute a class comprised of four-footed animals without wings or feathers. Birds, such as chickens, are clearly excluded from this class, while the USDA's inclusion of other quadrupeds such as horses and goats is manifestly reasonable.[9] *See e.g.*, 9 C.F.R. § 89.1. Thus, the court may not impose its own construction on the statute.

[9] Note that the language in the former version of the Twenty-Eight Hour Law is considerably more conservative than the language that the *McBoyle* court interpreted in The National Motor Vehicle Theft Act. The Theft Act uses the words "or *any* other self-propelled vehicle" (emphasis added), while the Twenty-Eight Hour Law simply reads "or other animals". Although the *McBoyle* court did not directly examine such implications, it seems that if the

In sum, the circumstances of the instant case easily satisfy both prongs of the *Chevron* test for a lawful agency construction of a statute: (1) It is clear that Congress did not intend for the Twenty-Eight Hour Law to apply to chickens; (2) Even if the court considers the intentions of Congress ambiguous, and even if the court would interpret the Twenty-Eight Hour Law differently, the court must nevertheless sustain the USDA's longstanding interpretation, for the interpretation is reasonable. Therefore, since chickens are not "animals" within the scope of the Twenty-Eight Hour Law, the Twenty-Eight Hour Law cannot preempt Floridina's Cruelty to Animals Law with respect to chickens.

II. THE SUPREMECY CLAUSE OF THE U. S. CONSITUTUION DOES NOT BAR WILLIAMS' CONVICTION UNDER THE FLORIDINA ANTI-CRUELTY STATUTE BECAUSE THE STATE ANTI-CRUELTY ACT IS NOT PREEMPTED BY THE FEDERAL TWENTY-EIGHT HOUR LAW.

The laws of the United States "shall be the supreme Law of the Land." Art. VI, cl. 2. The Supremacy Clause of the United States Constitution further enforces, "any Thing in the Constitution of Laws of any state to the Contrary notwithstanding." *Id.* There is no doubt that where a state law conflicts with federal law, it is "without effect." *Maryland v. Louisiana,* 451 U.S. 725, 746 (1981).

Although the fundamental principle of preemption is well established, Congress may do so only in a particular framework as has been defined by the Supreme Court of the United States. The States are independent sovereigns within the federal system, and Congress cannot cavalierly pre-empt state law, especially those exercising a historical state police power, in our case the regulation of animals. *Medtronic, Inc.*, 518 U.S. at 485. By passing the Twenty Eight Hour Law, Congress legislated in a field that the States have traditionally occupied, so there is an

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Supreme Court found "*any* other" to constitute restrictive language, "or other" necessarily constitutes restrictive language.

assumption that the historic police powers are not to be superseded without a clear and manifest purpose. *Rice*, 331 U.S. at 230.

More importantly, the Twenty Eight Hour Law does not fit into any preemption construction defined by the Supreme Court, and does not, therefore, preempt Floridina's Cruelty to Animals Law and the State is not barred from prosecuting Williams.

A. The Floridiana Cruelty to Animals Law is an Exercise of the State's Traditional Police Power and there is a Strong Presumption Against Preemption in this Area.

1. There are no Federal Anti-Cruelty Statutes in the United States.

There are currently three main federal statutes relating to animal welfare in the United States: the Humane Methods of Slaughter Act, the Twenty-Eight Hour Law of 1877, and the US Animal Welfare Act. None of these three Federal statutes are specifically federal "anti-cruelty" statutes. Paige M. Tomaselli, *International Comparative Animal Cruelty Laws*, Animal Legal and Historical Center, Michigan State University- Detroit College of Law (2003). The Twenty Eight Hour Law relates to transportation of animals across state lines, and the Humane Methods of Slaughter Act relates to the standards required for slaughtering of livestock to prevent needless suffering and promotes improvement in slaughtering techniques. *Id.*

The U.S. Animal Welfare Act is the most comprehensive of the three federal statutes. It does not, however, apply to the treatment of farm animals used for food or the treatment of pet animals by owners.[10] *Id.* The Act's only application is to animals used in or bred for research, exhibitions and zoos, animal fights and auctions. *Id.* The U.S. Animal Welfare Act is not a federal anti-cruelty law; instead, anti-cruelty legislation has traditionally been developed and determined by the individual states. *Id.*

2. The Regulation of Animals has Long Been Recognized as a Legitimate State Interest and as Part of the Historic Police Powers of the States.

[10] *See generally* the Animal Welfare Act, 7 U.S.C. §§ 2131-2159 (1994).

Police powers of the States are aimed at providing for public health, safety, and morals. *Barnes v. Glen Theatre, Inc.*, 501 U.S. 560, 569 (1991). The police powers of the States have traditionally included the regulation of animals. *DeHart v. Town of Austin, Ind.*, 39 F. 3d 718, 722 (7th Cir. 1994). Animal cruelty certainly is an aim of public morals within the ambit of police powers. The first, current, and only animal cruelty laws have been the product of state legislatures. The State of Maine in 1821, first recognized the importance of states regulating the area of animal cruelty:

> *"Be it Further enacted*, that if any person shall *cruelly* [emphasis added] beat any horse or cattle, and be thereof convicted, . . . he shall be punished by fine not less than two dollars nor more than five dollars, or by imprisonment in the common goal for a term not exceeding thirty days, according to the aggravation of the offence." [11] Me. Laws ch. IV, 7 (1821).

In *Kerr v. A.T. Kimmell*, the court found that there was a legitimate local public interest served by acts passed by state legislation that control the quality and humane treatment of animals *Kerr,* 740 F.Supp. 1525 (D. Kan. 1990). Additionally, the States have a recognized interest in cleansing their markets of commerce that the legislature finds unethical. *Cresenzi Bird Importers, Inc. v. State of New York,* 658 F. Supp. 1441, 1447 (S.D.N.Y. 1987).

In *Cresenzi Bird Importers*, the court found that New York had a legitimate state interest in regulating the market conditions that lead to the unjustifiable and senseless suffering and death of thousands of captured wild birds. *Id.* at 1447. The Floridina's Cruelty to Animals Law contemplates exercising similar interests for regulating cruelty and unjustifiable unethical treatment of any animals within its state boarders. The State defines these humane interests in 8 FRS section 621, the Cruelty to Animals Law, and Mr. Williams was in direct violation of the

[11] One of the earliest legislative initiatives by the State of Maine, this enactment was one of the first to focus on cruelty to animals. The common law did not limit what a person was permitted to do to their property (animals), and therefore the state legislatures began to take this area of regulation into their own hands. *See generally* David Favre and Vivien Tsang, *The Development of Anti-Cruelty laws During the 1800's,* 1993 Det. C. L. Rev. 1 (Spring 1993).

law. Mr. Williams was transporting a large number of dead and sick chickens, a violation of the Floridina Cruelty to Animals Law and in direct opposition to their State's interest in the humane treatment of animals.

Floridina has a historical and legitimate interest in regulating animals within their jurisdiction. Floridina's anti-cruelty statute is encompassed in this field of animal regulation and, therefore, there is a strong presumption that this particular historic police power was not to be superseded by the Twenty-Eight Hour Law. Further, when a regulation is within a field traditionally occupied by the States, the Federal Act must show that it was the *clear and manifest* purpose of Congress to preempt this area. *Santa Fe Elevator Corp.,* 331 U.S. at 230.

B. Congress Did Not Intend to Preempt State Anti-Cruelty Statutes by Enacting the Twenty-Eight Hour Law.

The keystone of a preemption analysis is Congress' intent. A preemption analysis begins "with the language employed by Congress and the assumption that the ordinary meaning of the language accurately expresses the legislative purpose." *DeHart,* 39 F. 3d at 722. This concept was reiterated in *Mercury Marine,* where the Court instructs us that the best evidence of Congress' pre-emptive intent is the plain wording of the statutory text. *Sprietsma v. Mercuty Marine*, 537 U.S. 51, 62-63 (2002).

The plain wording of the Twenty-Eight Hour Law seems to evidence only one facial intent of Congress; that there should be a minimum standard for interstate ground transportation of four-legged animals. The title of 49 U.S.C.A § 80502 is specifically labeled "Transportation of Animals". The statute's plain wording explicitly prohibits confining four-legged animals in a vehicle for more than twenty-eight hours without unloading or providing the animals with feed, water, and rest. 49 U.S.C.A § 80502 (1994).

Congress' plain intent was to set a minimum acceptable limit for interstate transportation of these four-legged animals. Congress made no attempt to define or state within the statute whether meeting the Twenty-Eight Hour Law requirements would overcome any additional charge of animal cruelty. Interstate transportation must be accomplished in such a way to meet the federal standards of the Twenty-Eight Hour Law, however, the states should be able to complement the law with anti-cruelty statutes for the humane treatment of the animals, and provide the law for animals not covered under the statute.

The Floridina anti-cruelty law covers the humane treatment of *all* animals, whereas the Twenty-Eight Hour Law only applies to four-legged animals like cattle, horses, goats, and pigs. The Twenty-Eight Hour Law does not explicitly apply to birds such as chickens, as is at issue in our case. Congress only intended to cover four-legged animals with the law, not chickens. Therefore, there can be no Congressional intent for preemption found, and we must look to the state law to supplement these other areas of animal cruelty.

Further, if state's anti-cruelty laws are pre-empted by the Twenty-Eight Hour Law, the federal government will effectively be providing interstate carriers a "get out of jail free card" for any and every type animal cruelty. Surely, Congress did not intend to allow interstate transporters to carry dead animals, as long as they were provided food, water, and rest. An analysis of each express, conflict, obstacle, and field preemption will effectively rule out any intention to the contrary. There is no specific area of federal preemption that would inhibit, conflict with, or completely and expressly preempt the obvious transportation goals that Congress expressed in the Twenty Eight Hour Law.

1. Express Preemption is Inapplicable.

The trial judge was correct in determining that express preemption is not applicable in this case. When acting within constitutional limits, Congress is empowered to preempt state law by so stating in express terms. *Hillsborough County v. Automated Medical Labs.*, 471 U.S. 707, 713 (1985). There are no express terms in the Twenty-Eight Hour Law that expressly preempt any state law regarding the treatment of animals during transportation.

2. Conflict Preemption is Inapplicable.

Where it is impossible for a party to comply with both state and federal requirements, courts have found conflict preemption. *English v. General Electric Company*, 496 U.S. 72, 79 (1990). The trial judge found that if the Twenty-Eight Hour Law was violated, a state prosecution could be had simultaneously for violation of the Floridina anti-cruelty criminal code, and the conflict preemption doctrine was inapplicable. This is a founded argument, however, there is a stronger argument against this type of preemption.

More importantly is the word "impossible" within the meaning of conflict preemption. *Id.* Mr. Williams may argue that Twenty-Eight Hour Law allows a particular set of circumstance for ground transportation, and when met may still not meet the standards of the Floridina anti-cruelty law. The key word, however, is impossible. It is certainly possible that animals can be transported in a humane way that meet both the Twenty-Eight Hour Law at the same time as meet state anti-cruelty statutes.

3. Obstacle Preemption is Inapplicable.

Where under the particular circumstances of a case, the state law stands as an obstacle to the execution of the full purposes and objectives of Congress, the state law may be preempted under the obstacle category of preemption. *Crosby v. National Foreign Trade Council,* 530 U.S. 363, 373 (2000). A sufficient obstacle is a matter of judgment determined by examining the

federal statute as a whole and identifying its purpose and intended effects. *Id.* Williams contends that the Twenty-Eight Hour Law's intent was to prevent cruel treatment of animals in transport, and Congress set an exclusive federal standard for that mistreatment, similar to that of the Humane Methods of Slaughter Act. The State disagrees.

The Humane Methods of Slaughter Act made it a policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods. 7 U.S.C. § 1901, 1902, 1904, 1906, 1907 (1958). Included in these sections are Congress' statement that livestock must be slaughtered in a humane manner to prevent needless suffering, research methods on humane methods of slaughter, the non-applicability of these statutes to religious or ritual slaughter, and the investigation into the care of non-ambulatory livestock. *Id.*

There is an important distinction between the regulation of the treatment of animals and the mass slaughtering of livestock for food purposes. The United States Department of Agriculture, a federal entity, has long been the law-enforcing agency in the area of animal slaughter. The Humane Methods Slaughter Act was a pervasive federal law over an expansive meat production industry, not an exclusive federal standard for mistreatment of animals.

In our case, the underlying policies that the trial court identified included the humane treatment of animals and protection of the food supply. (R. 8). The humane treatment of animals within its boarders and the protection of the state's citizens' health are traditionally a state police power. Further, the Floridina Cruelty to Animals Law only supplements and even helps to fulfill the purpose and intended effects of the Twenty Eight Hour Law. As the trial court correctly pointed out, "the underlying policies are not in any way impacted by the Floridina

legislature's determination that certain conduct constitutes cruelty under state law." (R. 9). The Floridina law does not serve as an obstacle to the realization of the Twenty-Eight Hour Law.

4. Field Preemption is Inapplicable.

Where there is no express preemptive language, Congress' intent to preempt all state law in a particular area may be inferred where the scheme of federal regulation is sufficiently comprehensive to "leave no room" for supplementary state regulation. *Hillsborough County,* 471 U.S. at 713. Even further, preemption of an entire field will be inferred where the field is one in which "the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject." *Id.* An example of a field preemption analysis falls with the Humane Methods Slaughter Act. The United States has such an imbedded interest in the wide scale production of slaughtered meat production, that a complete field preemption of this area of law was valid.

The trial court noted that a broad application of field preemption would eliminate the states' traditional police powers of regulating animal cruelty. (R. 9). It has already been well established that animal cruelty is a traditional and historical police power reserved to the States. *See supra.*

C. *People v. Southern Pacific Co.* was an Overbroad Conclusion of the Twenty-Eight Hour Law and is Inapplicable to the Circumstances before the Court.

Williams argues that the holding in *People v. Southern Pacific Co.* is controlling in our case. This case involved the interstate transportation of cattle, evoking the Twenty-Eight Hour Law. The court found that the federal act constituted a single, comprehensive scheme, which assured uniform humane treatment of animals transported interstate and imposed uniform liability upon all common carriers. *People v. Southern Pacific Co.,* 208 Cal. App. 2d 745, 752

(1962). Further, the California Appellate Court concluded that the terms of transportation were so pervasive that Congress did not leave room for the law to be supplemented. *Id.*

The court's conclusion in *Southern Pacific Co.* is overbroad. To conclude that the Twenty-Eight Hour Law assures uniform humane treatment of animals and that the there was no room for the law to be supplemented is overreaching. If the terms of the Twenty-Eight Hour Law are so pervasive, they would expressly state that their intention is to preempt any traditional state-law power to regulate this area. Further, the Legislature would have defined "humane" and "animal cruelty" if this federal law were to override this area of state law. The Twenty-Eight Hour Law makes no mention of animal cruelty, leaving the strong presumption that states should maintain their historical power to regulate cruelty to animals via their own laws.

Further, the trial court points us to the important realization that the Twenty-Eight Hour Law was not meant to change the common-law duty of the carrier. (R. 10). The question of negligence as to such confinement is still left to the states' common law analysis, notwithstanding the Twenty-Eight Hour Law. *Hogg v. Louisville & N.R. Co.,* 127 S.E. 830, 832 (Ga. Ct. App. 1925). Although the federal law prescribes fixed time limits and duties on interstate travel, "it is not a grant of privilege to the carrier authorizing it to confine the [stock] for the period of time therein mentioned, irrelevant of the question of negligence in doing so." *Id.*

In light of the disturbing facts that Williams was transporting a plethora of dead and sick chickens, there should be no grant of privilege or exclusion under the Twenty-Eight Hour Law simply because he did so within the laws' set time period. This certainly was not the Congressional intent of the law, nor should the law be construed in such a way, as the Court held in *Southern Pacific Co.,* that would enable such circumstances to flourish throughout the United

States. The Floridina Cruelty to Animals Law is the applicable law under which to prosecute Williams for his actions.

CONCLUSION

While there are, undoubtedly, good policy reasons for including chickens within the scope of the Twenty-Eight Hour Law, Congress has unequivocally excluded chickens from the law's reach. The Court should limit its review to interpreting and applying the law and should not encroach on the judgments of elected officials by expanding the law to include chickens. Since chickens are not "animals" within the coverage of the Twenty-Eight Hour Law, the Twenty-Eight Hour Law cannot preempt Floridina's anti-cruelty law with respect to chickens.

Further, Congress legislated in a field that the States have traditionally occupied, so there is a strong assumption that the historic police powers are not to be superseded by the federal law without a clear and manifest purpose. *Santa Fe Elevator Corp.,* 331 U.S. at 230. Further, there is no clear and manifest intent by Congress to preempt state anti-cruelty statutes under any of the four types of preemption doctrines, therefore, Williams conviction under the Floridina anti-cruelty statute should stand.

The State respectfully requests that the Third Division of the Floridina Court of Appeals reverse the District Court's finding that chickens are "animals" within the purview of the Twenty-Eight Hour Law and affirm the District Court's finding that the Twenty-Eight Hour Law does not preempt Williams' indictment or prosecution under Floridina's anti-cruelty law.