IN THE
STATE OF FLORIDINA
COURT OF APPEALS
DIVISION THREE

Cr. No. 08-1028

THE PEOPLE,

Respondent/Cross-Appellant,

v.

JEFFREY WILLIAMS

Appellant/Cross-Respondent.

Appeal from the Stinsonia District Court

BRIEF FOR APPELLANT/CROSS-RESPONDENT

Team 4

Counsel for Appellant/Cross-Respondent

QUESTIONS PRESENTED FOR REVIEW

1. May the term “animals” in the Twenty-Eight Hour Law be construed to exclude chickens?

2. Does the Supremacy Clause of the U.S. Constitution bar conviction under the Floridina anti-cruelty statute because the state anti-cruelty law is preempted by the federal Twenty-Eight Hour Law?

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ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO

Issues of law in criminal appeals must be reviewed de novo. United States v. Mejia, 545 F.3d 179, 204 (2d Cir. 2008).

II. CHICKENS ARE ANIMALS UNDER THE TWENTY-EIGHT HOUR LAW.

The Twenty-Eight Hour Law must be construed to include chickens. Common law requires that a term within a statute be given its normal meaning, absent indication that Congress intended otherwise. Chickens are within the common meaning of the word "animal." In addition, including chickens in the protections of the Twenty-Eight Hour Law fulfills Congress's intent of protecting commonly transported animals. Finally, public policy requires that chickens are included in the food safety protections of the Twenty-Eight Hour Law.

A. The Term "Animal" Should Be Construed by Its Ordinary Meaning to Include Chickens.

The word "animal" as used in the Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2006), must include chickens. The United States Supreme Court has repeatedly held that "[t]he starting point in every case involving construction of a statute is the language itself." Watt v. Alaska, 451 U.S. 259, 265-66 (quoting Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723, 756 (1975) (Powell, J., concurring)). When the meaning of a term is not defined within a statute, a court shall give the word "its ordinary or natural meaning." Smith v. United States, 508 U.S. 223, 228 (1993). Particularly when the term at issue is not technical language, it is "addressed to the common run of men and is therefore to be understood according to the sense of the thing, as the ordinary man has a right to rely on ordinary words addressed to him." Addison v. Holly Hill

Fruit Prod., 322 U.S. 607, 618 (1944).

In Smith, the United States Supreme Court encountered the issue of whether trading a gun for drugs was "using" a firearm "in relation to" a drug crime under a Federal statute designating specific penalties for such offenses. Smith, 508 U.S. at 225. The petitioner-defendant argued that the statute, 18 U.S.C. § 924 (2006), was designed to prevent the use of a gun as weapon and that his use of the gun for barter fell outside the statute. Smith, 508 U.S. at 229. The Court looked to the dictionary definition of the word "use" and held that the petitioner had "used" the gun within the context of the statute. Id. In her opinion for the majority, Justice O'Connor stated, "[h]ad Congress intended the narrow construction petitioner urges, it could have so indicated. It did not, and we decline to introduce that additional requirement on our own." Id. at 229.

In the case at hand, the Appellant is requesting that this court create an exclusion that does not exist within the language of the statute. Specifically, the Appellant requests that this court exclude chickens from the term "animals" as used by the Twenty-Eight Hour Law. To do so would contradict numerous Supreme Court precedents requiring words to be given their ordinary meaning. The word "animal" is defined as "any of a kingdom (*Animalia*) of living beings typically differing from plants in capacity for spontaneous movement and rapid motor response to stimulation." Webster's New Collegiate Dictionary 45 (1980). As a chicken falls within the kingdom *Animalia*, an ordinary definition of the word "animal" would include chickens. See, e.g., Afaf Al-Nassar et al., Overview of Chicken Taxonomy and Domestication, 63 World's Poultry Sci. J. 285 (2007). In addition, the United States Department of Agriculture recognizes that chickens are animals and included chickens in their 2007 United States Animal

Health Report. U.S. Dep't of Agric., Bull. No. 803, Agriculture Information (2007), *available at* http://www.aphis.usda.gov/publications/animal_health/content/printable_version/ahr2007.pdf .

Placing chickens outside the reach of 49 U.S.C. § 80502 betrays the "ordinary and natural meaning" of the word "animal." Also, excluding chickens makes the statute more difficult for the "ordinary man" to construe. The average individual is likely aware that chickens are animals in a scientific sense but are far less likely to be apprised of judicial precedents declaring that chickens are not animals under specific laws. In addition, by excluding chickens from § 80502, this court would be altering a law much the way the Supreme Court declined to do in Smith. While the goals of the laws at issue are different, O'Connor's sentiment against introducing extraneous requirements into legislation is valid here. Ultimately, the term "animal" in § 80502 must be construed by its dictionary meaning, which would include chickens.

B. The Legislative Histories of the Original Twenty-Eight Hour Law and the 1994 Revisions Both Indicate Congress Intended Chickens To Be "Animals" Under the Twenty-Eight Hour Law.

The legislative history of a law may be taken into account by a court if the meaning of a term is not clear. Legislative history refers to pre-enactment statements of those who drafted or voted for a law. District of Columbia v. Heller, 128 S. Ct. 2783, 2805 (2008), and analysis of legislative history is a traditional tool of statutory construction. Zuni Pub. Sch. Dist. No. 89 v. Dep't of Educ., 127 S. Ct. 1534, 1550 (2007). Legislative history is considered persuasive by some, not because the statements reflect the general understanding of disputed terms, but because the legislators who heard or read those statements presumably voted with that understanding. Heller, 128 S. Ct. at 2805. Legislative history serves as legitimate evidence of congressional intent because it is presumed to have been ratified by Congress and the President

when the relevant legislation was enacted. Additionally, the ordinary meaning of words will be used in construing a statute "absent an indication Congress intended them to bear some different import." Williams v. Taylor, 529 U.S. 420, 431 (2000). Words used in a statute will be given their normal meaning "in the absence of persuasive reasons to the contrary." Burns v. Alcala, 420 U.S. 575, 580-81 (1975). Here, even if the definition of "animal" did not clearly include chickens, the legislative history would still support the inclusion of poultry under the law.

1. Congress's Intent in Passing the Twenty-Eight Hour Law Was To Prevent Animal Cruelty and To Foster Food Safety.

From its introduction, Congress clearly intended the original version of the Twenty-Eight Hour Law to protect all livestock facing transport as well as the humans who eat those animals. In fact, the floor debate on the bill concerned not the propriety of the goals but rather the means by which Congress could achieve their ends without offending the Constitution. Cong. Globe, 42nd Cong., 2d Sess. 4226 (1872). Senator Thomas Bayard of Delaware stated of the bill, "I should be heartily glad to contribute in any way to the amelioration of the condition of dumb animals in their transit through this country." Id. at 4231. Senator Eugene Casserly from California addressed food safety issues, as well: "Humanity calls for it and the health of the community calls for it. Cattle are brought into market sick and sore, and slaughtered to prevent their dying, and then are sold in our markets, impairing health." Id. at 4227. Both animal cruelty and food safety were the driving force of the bill within the Senate.

When the original version of the Twenty-Eight Hour Law passed in 1872 used the terminology "cattle, sheep, swine, or other animals" rather than the current language which simply states "animals." Indeed, much of the floor debate in the Senate revolved around cattle in particular. However, the 42nd Congress's emphasis on cows and failure to address chickens

makes sense in the historical context. During the 1800's, cattle production changed drastically. As the railroads moved further west, farmers moved out west as well in search of cheaper land for the cattle to graze. Nat'l Cattleman's Beef Ass'n, History of the Beef Industry (2008), *available at* http://www.beeffrompasturetoplate.org/historytimeline.aspx. In the mid-1800's, Chicago became the center of all the country's stockyards, requiring many live cattle to be shipped from areas as far as Texas. Id. The transportation of cattle was of key importance at the time Congress signed the Twenty-Eight Hour Law.

Conversely, the production of chickens for food did not start until much later. Broiler chickens, those raised for meat rather than eggs, were not produced on a large-scale until the mid-1920's. Poultry: Broiler Chicken Production in the U.S., AgrAbility Q., Mar. 2005, at 3, 3, *available at* http://www.agrabilityproject.org/newsletter/march_2005/AgrAbility%20Quarterly%20March%202005.pdf. The commercial broiler industry in the United States began in Delaware over 80 years ago. Id. A "broiler" is a chicken raised for meat rather than eggs. Id. Before the development of the broiler industry, chicken meat was mostly a by-product of egg production. Id. Until that industry arose, Americans did not consume chicken on a regular basis. Id. Very few chickens were transported by rail or boat or even consumed during this period. As a result, the 42nd Congress had no reason to specifically list chickens. However, the legislators indicated a willingness to adjust to future developments in agriculture by including the "and other animals" language in the statute. Based on Congress's goals for the Twenty-Eight Hour Law, chickens must be covered to prevent inhumane treatment and to ensure food safety.

2. Congress's 1994 Revisions to the Twenty-Eight Hours Law are Stylistic Rather than Substantive.

Congress's 1994 revision of the Twenty-Eight Hour Law sought to make only technical changes to the law. The relevant portion of the 1994 revision replaced the phrase "Carrying or transporting cattle, sheep, swine or other animals," with a briefer phrase, "transporting animals." The House Report for the bill explained that the change was made "to eliminate unnecessary words." H.R. REP. No. 103-180 (1993). The Senate Report further elucidates the aim of the legislation, stating "[t]he purpose of H.R. 1758 is to restate in comprehensive form, *without substantive change*, certain general and permanent laws related to transportation." S. REP. No. 103-265 (1994) (emphasis added). Further, "[i]n the restatement, simple language has been substituted for awkward and obsolete terms." Id.

The 103rd Congress simply eliminated unnecessary words in their revision of § 80502. As cattle, sheep, and swine are no longer the only animals commonly transported, those descriptive terms were the type of obsolete language Congress aimed to eliminate. The State argues that the 103rd Congress intended the 1994 revisions to "carr[y] forward a limitation to four-footed animals." (Mem. Op. 6.) However, this would force a substantive change in the law as the 42nd Congress wrote it and their focus on food safety. Placing chickens outside the scope of the Twenty-Eight Hour Law would constitute a substantive change, which was not the goal of the 1994 revision. Both the legislative histories at issue here require that chickens be treated as animals under the Twenty-Eight Hour Law.

C. Public Policy Requires That the Twenty-Eight Hour Law Apply to Chickens in Order to Maintain Food Safety.

Public policy bars an exemption for chickens from the Twenty-Eight Hour Law. Chicken makes up a large portion of the American diet as well as exports to other countries. In addition,

studies indicate that improper transportation of poultry results in a high risk for the spread of disease. Allowing chickens to be transported inhumanely is detrimental to both humans and the animals.

Americans consume vast amounts of chicken each year. "U.S. consumption of poultry meat (broilers, other chicken, and turkey) is considerably higher than beef or pork, but less than total red meat consumption." U.S. Dep't of Agric., Briefing on Chicken and Eggs, http://www.ers.usda.gov/Briefing/Poultry/. The per capita consumption of chicken in America is over 70 pounds per year. Veronica Hirsch, Legal Protections of the Domestic Chicken in the United States and Europe, Animal Legal & Hist. Ctr. (2003), http://www.animallaw.info/articles/dduschick.htm. Overall, chickens constitute 90 percent of the 10 billion animals used in United States agriculture. Id. The United States not only produces chicken for domestic consumption but provides chicken to other countries: "The U.S. poultry industry is the world's largest producer and second largest exporter of poultry meat." Briefing on Chicken and Eggs, supra.

With chicken consumption at this level, allowing inhumane transportation of these animals makes little sense in terms of food safety. Chickens are affected by the stress of transportation in many ways. Some symptoms of stress to poultry include "physical, physiological and behavioral changes; among those are death, thermal stress, trauma, fatigue, hunger and thirst." Gary Smith et al., Effect of Transport on Meat Quality and Animal Welfare of Cattle, Pigs, Sheep, Horses, Deer, and Poultry, http://www.grandin.com/behaviour/effect.of.transport.html. The stress of transport makes animals more susceptible to disease, both while travelling and soon after the journey. European Comm'n, Scientific Comm. on Animal Health & Animal Welfare, The Welfare of Animals

During Transport 14 (2002), http://ec.europa.eu/food/fs/sc/scah/out71_en.pdf. Time is an important factor in the level of stress a chicken faces during transfer: "Scientific evidence shows increasing stress and mortality in all classes of poultry as transportation time, holding time and feed- and water-deprivation time increase." Smith, Effect of Transport on Meat Quality, supra.

The combination of lowered immunity and close proximity between animals leads to the increased spread of pathogens. The Welfare of Animals During Transport, supra, at 14. This is one of the reasons for the quick spread of poultry-carried diseases, such as Newcastle disease and Avian flu. Id. at 18. The Food and Agriculture Organization ("FAO") of the United Nations recently indicated that unsafe transportation of birds was a primary factor in the Avian flu outbreak in Asia:

> Most outbreaks of avian influenza can be linked to movements of poultry, poultry manure, poultry by-products and accidental transfer of infected material such as bird droppings, bedding straw or soil on vehicles, equipment, cages or egg flats, clothes and shoes. *Worldwide, unregulated movement of poultry is the most important way that the disease is spread*.

United Nations, Animal Production and Health Division Avian Flu: Questions and Answers, http://www.fao.org/avianflu/en/qanda.html (emphasis added). Keeping chickens within the scope of the Twenty-Eight Hour Law is one key way in which the United States can help stem the spread of animal-borne disease. As such, exempting chickens from the scope of § 80502 is simply bad public policy.

Contrary to the State's assertions, there is no reason to exempt chickens from the reach of the Twenty-Eight Hour Law. Chickens are animals within the plain meaning of the word and, thus, should be within the protections § 80502. In addition, Congress's goal of ensuring humane treatment of animals applies equally to chickens as it does to other livestock. Most importantly, excluding chickens from the law would create a massive gap in food safety procedures.

Inhumanely shipping chickens creates a greatened risk of pathogens which then pollute the American food industry. This runs contrary to both Congress's stated purpose of the law and also public policy. The term "animal" in § 80502 must be construed to include chickens.

III. APPLICATION OF THE FLORIDINA ANTI-CRUELTY LAW VIOLATES THE SUPREMACY CLAUSE.

The Supremacy Clause of the U.S. Constitution bars Appellant's conviction under the Floridina anti-cruelty statute because the state statute is preempted by the federal Twenty-Eight Hour Law. The Supremacy Clause establishes that federal law is paramount and that Congress has the power to preempt state law. U.S. Const. art. VI, cl. 2; Cipollone v. Ligget Group, Inc., 505 U.S. 504, 516 (1992). There is a presumption against federal preemption in areas traditionally regulated by the states, but congressional intent is the ultimate touchstone in preemption analysis. Cipollone, 505 U.S. at 516; Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

Though the categories of preemption are not "rigidly distinct," English v. Gen. Elec. Co., 496 U.S. 72, 79 n.5 (1990), federal preemption can be broken into four types: express, conflict, obstacle, and field. (Mem. Op. 8.) It is the burden of the party claiming federal preemption to prove the state law is preempted. Id. at 7. This Court should find that both field and obstacle preemption apply against the application of the Floridina anti-cruelty law to Appellant, rendering his conviction and indictment void under the Supremacy Clause.

A. The Twenty-Eight Hour Law Preempts the Floridina Statute Under Obstacle Preemption.

Preemption will be found where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372-73 (2000). "What is a sufficient obstacle is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects." Id. at 373. The entire scheme of the statute must be considered, and what is implied is of no less force than what is expressed. Id. (quoting Savage v. Jones, 225 U.S. 501, 533 (1912)).

In Crosby, the Court found the state statute at issue was preempted by the Foreign Operations, Export Financing, and Related Programs Appropriations Act because the state statute infringed on the powers and discretion of Congress and the President. The Court found that the state statute "penalizes some private action that the federal Act . . . may allow, and pulls levers of influence that the federal Act does not reach." Crosby, 530 U.S. at 376. Similarly, the Floridina anti-cruelty statute reaches many different types of cruelty and neglect, whereas the Twenty-Eight Hour Law only addresses appropriate intervals for confinement and food and water to be given to livestock in interstate transport. See 8 FRS § 621; 49 U.S.C. § 80502. The state statute here penalizes actions the Twenty-Eight Hour Law allows and carries penalties beyond what the Twenty-Eight Hour Law provides, similar to the preempted statute in Crosby.

Here, as in Crosby, the application of the state law also "undermines the . . . intended statutory authority." Crosby, 530 U.S. at 377. In reaching its conclusion, the Crosby Court looked to the legislative history of the federal law, emphasizing that "Congress repeatedly considered and rejected targeting a broader range of conduct" and that this fact "lends additional

support to [the finding of preemption]." Id. at 378 n.13. There, statements of the sponsors of the federal act lent weight to the conclusion that the limits in the federal law were deliberate. Id.

The legislative history of the Twenty-Eight Hour Law indicates that the provisions therein were deliberate as well. Several senators addressed concerns about the implementation, practicality, and effectiveness of the bill, and also about whether the provisions were flexible enough to allow for the different needs of animals traversing different parts of the country in different seasons. Cong. Globe, 42d Cong., 2d Sess. 4232 (1872). However, the bill was passed without serious consideration of these matters – no amendment to this affect was offered. This indicates that Congress intentionally set *minimal* requirements, not the most humane or strict requirements possible, to achieve more humane transport of animals while still maintaining the efficiency of interstate commerce.

Application of state anti-cruelty statutes to the interstate transport of animals would frustrate the efficiency of interstate commerce and eliminate the uniform standards that carriers are accustomed to complying with. The states cannot "under any guise" impose direct burdens on interstate commerce. Minnesota Rate Cases, 230 U.S. 352, 400 (1913). It would place an unrealistic burden on the persons covered by the Twenty-Eight Hour Law to expect them to be aware of and to comply with 50 different sets of anti-cruelty measures while attempting to execute timely and safe deliveries.

The Court should find here that Congress would not "have gone to such lengths to empower the [federal government] if it had been willing to compromise [its] effectiveness by deference to every provision of state statute or local ordinance that might, if enforced, blunt the consequences of discretionary [federal] action." Crosby, 530 U.S. at 376. Congress set minimal standards in passing the Twenty-Eight Hour Law, and the addition of state anti-cruelty statutes to

the federal provisions would frustrate the efficiency that a uniform system of regulation and monitoring allows. For this reason, the Twenty-Eight Hour Law must be found to preempt the Floridina statute under the doctrine of conflict preemption.

B. The Twenty-Eight Hour Law Preempts the Floridina Statute Under Field Preemption.

State law will be preempted by federal law where the state law regulates conduct in a field that Congress intended the federal government to occupy exclusively. English, 496 U.S. at 79. "Such Congressional intent may be inferred from a 'scheme of federal regulation . . . so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it,' or where an Act of Congress 'touches a field in which federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" Id. (quoting Rice, 331 U.S. at 230) (alteration in original). The Twenty-Eight Hour Law addresses a field in which federal interest is dominant and thus preclusive: interstate commerce. For this reason, the Twenty-Eight Hour Law should be found to preempt the Floridina anti-cruelty statute under the doctrine of field preemption.

Where the field that Congress is said to have preempted includes areas that have been traditionally occupied by the states, the Court has held that congressional intent to supersede state laws must be clear and manifest. English, 496 U.S. at 79 (citing Jones v. Rath Packing Co., 430 U.S. 519, 525 (1977)). The lower court points out that animal cruelty has traditionally been a local matter, regulated by the states. (Mem. Op. 9.) (collecting cases). In Rice, the Court examined a law that, like the Twenty-Eight Hour Law, addressed an area where state law had been paramount: warehouse regulation. 331 U.S. at 218. The Rice Court pointed out that Congress, in crafting the federal law, intended specifically to create a policy of federal

dominance. 331 U.S. at 232. Though, in Rice, Congress's actions were more overt (it affirmatively removed language from the federal statute that had previously granted states power), Congress's intent in creating in the Twenty-Eight Hour Law a dominating federal scheme is just as plausible, especially considering the Law's legislative history.

1. The Legislative History of the Twenty-Eight Hour Law Supports a Finding of Field Preemption.

Though animal cruelty has traditionally been left to state police powers (Mem. Op. 9.), the legislative history of the Twenty-Eight Hour Law indicates not only Congress's awareness of this traditional state role, but also its desire to supplant that role concerning the interstate transport of livestock. For a discussion on the persuasive effect of legislative history, see supra Part II.B. Since congressional intent is critical in preemption analysis, Cipollone, 505 U.S. at 516, legislative history can significantly inform that analysis.

The floor debates preceding the passing of the Twenty-Eight Hour Law demonstrate a conflict between, on one hand, senators who thought that the bill overstepped congressional power and infringed on the state police power, and on the other hand, senators who thought the bill was an appropriate exercise of congressional power to regulate interstate commerce. It was argued repeatedly that the prevention of cruelty to animals, even in transit between states, should be left to the states. See, e.g., Cong. Globe, 42d Cong., 2d Sess. 4226-27 (1872). Supporters of the bill reiterated their position that the offense in question would be committed through a number of states and thus the Commerce Clause power would be exercised appropriate. Id. at 4227.

Critics of the bill also argued that whoever held the power under consideration would have to hold it exclusively: "It is very difficult for me to conceive of two different sovereigns

exercising police powers over the same subject within the same territory. Either the one is supreme or the other is. Whichever is supreme is exclusively supreme. . . . When two powers come in conflict, the lesser must give way." Id. at 4229. Additionally part of the legislative history is the statement that "in the case of concurrent powers, whenever Congress does exercise the power it ousts all State legislation upon the subject as if it were admitted that the power of Congress was exclusive and that the States have no right whatsoever to legislate on the subject." Id. at 4235. It is compelling that Congress had these considerations before it and chose to pass the Twenty-Eight Hour Law without explicitly allowing room for state involvement.

The most persuasive aspect of the legislative history is the rejection of an amendment that would have specifically allowed for cooperation between the Twenty-Eight Hour Law and state anti-cruelty statutes. Id. at 4232. The amendment would have provided that the Twenty-Eight Hour Law would not apply "in any State which shall have by law sufficient provisions for the prevention of cruelty to animals within the intent and meaning of this act, together with the same or equal means for enforcing such provisions." Id. at 4226. Congress had a choice between an exclusively federal scheme and one that involved the states, and it specifically rejected state involvement when it passed the Twenty-Eight Hour Law without this amendment. The legislative history of the Twenty-Eight Hour Law indicates a rejection of state involvement and a seizure of Commerce Clause powers to regulate interstate commerce. See id. at 4227.

2. There Is Precedent for Finding That the Twenty-Eight Hour Law Preempts State Action Under Field Preemption.

Appellant urges the Court to look to the holding of People v. Southern Pacific Co., 208 Cal. App. 2d 745 (Cal. Ct. App. 1962), on the matter of field preemption. There, the court held that a prosecution under the California penal code was barred by the predecessor to the Twenty-

Eight Hour Law under the doctrine of field preemption. S. Pac., 208 Cal. App. 2d at 752. Finding that the transport in question involved interstate commerce, the court then held that the state penal code could not be applied to a common carrier engaged in interstate commerce. Id. at 750. "The detailed care with which the federal act was framed, spelling out the maximum number of hours for confinement during which food and water may be withheld by the carrier, a minimum number of hours for the animals to rest in properly equipped pens, providing for the amount and method of imposing a civil penalty and conferring exclusive judicial jurisdiction upon the federal courts, leads to the ineluctable conclusion that the Congress has intended to occupy the entire field of regulating the treatment of livestock carried in the stream of national commerce." Id. at 751-52.

This Court should likewise affirm that the Twenty-Eight Hour Law "constitutes a single, comprehensive scheme which, by its natural operation, amply assures uniform humane treatment of animals transported interstate and imposes uniform liability upon all common carriers. So pervasive are its terms that reason compels the inference Congress left no room for the states to supplement it." Id. at 752. The Southern Pacific court reached its conclusion partially through a Commerce Clause analysis, and that same analysis is in Appellant's favor here as well.

Congress derives power to regulate interstate commerce from the Commerce Clause of the U.S. Constitution. U.S. Const., art. I, § 8, cl. 3; Gibbons v. Ogden, 22 U.S. 1, 189 (1824). Appellant was indisputably involved in the interstate transport of livestock being carried in the stream of national commerce. (Mem. Op. 2, 7.) ("[Williams was] travelling through Floridina on the way to New York," at 2, and "all of Williams' trips . . . involve travel in more than one state," at 7). Congress is free to exclude from interstate commerce articles it may "conceive to be injurious to the public health, morals, or welfare, even though the state has not sought to

regulate their use." United States v. Darby, 312 U.S. 100, 114 (1941). Further, Congress's assertion of the power to regulate interstate commerce is not objectionable even if its exercise is similar to that of the police power of the states. Darby, 312 U.S. at 114. Here, even though Congress was encroaching on traditional state police powers regarding animal cruelty, this is acceptable under the Commerce Clause powers set out in Darby. If Congress sees fit to exclude from interstate commerce livestock transported in an inhumane manner, it is within its power to regulate in this fashion and to preempt state law within the same field. For this reason, the Floridina statute is preempted by the Twenty-Eight Hour Law.

Though several other state courts have reached conclusions different from the court in Southern Pacific, (see Mem. Op. 10.), these cases do not take into consideration the legislative history of the Twenty-Eight Hour Law and the strong intent communicated therein to occupy the field of interstate livestock transport as it effects the humane treatment of animals and public health. See, e.g., Cong. Globe, 42d Cong., 2d Sess. 4227 (1872). Furthermore, those cases cited by the Stinsonia District Court below deal with financial loss and liability as a result of negligence in caring for the livestock transported. See Lynn v. Mellon, 131 So. 458 (Ala. Ct. App. 1930); Hogg v. Louisville & Nashville R.R. Co., 127 S.E. 830 (Ct. App. Ga. 1925).

The common law remedies examined in those cases have different policy aims and implementations than anti-cruelty statutes, such as the Floridina statute at issue here. Anti-cruelty statutes fall more in line with the field sought to be occupied by the federal government under the Twenty-Eight Hour Law. See Cong. Globe, 42d Cong., 2d Sess. 4227 (1872) ("the effect of this bill is that it only applies to cases of cruelty"). The Twenty-Eight Hour Law does not attempt to reach the financial liability carriers might owe owners, e.g., if the livestock were not treated with a minimum of humane consideration and thus lost financial value during

transport, as was at issue in those cases. Cf. English, 496 U.S. at 90 (1990) (holding that a state tort claim was not so related to the radiological safety aspects involved in the operation of the nuclear facility that it fell within the preempted field of nuclear safety). The Twenty-Eight Hour Law seeks to ensure that minimums of humane treatment exist for the sake of the animals and public health. Anti-cruelty laws fall within this field, while common law remedies for damages to property do not.

The legislative history and interpreting decisions of the Twenty-Eight Hour Law indicate that Congress intended the federal government to occupy the field of interstate livestock transport exclusively. This intent establishes field preemption, and renders invalid the application of the Floridina anti-cruelty statute to Appellant.

C. Absence of Express or Conflict Preemption Is Not Fatal to Appellant's Argument.

The Floridina statute is preempted by the Twenty-Eight Hour Law under theories of obstacle and field preemption. However, the fact that express and conflict preemption are not applicable does not detract from Appellant's argument or bolster the state's appeal.

The Floridina statute is not saved from preemption because there is no direct conflict between it and the federal law, i.e., because there is no conflict preemption. (See Mem. Op. 8.) ("The Court is of the opinion that if Williams made a trip that lasted twenty-nine hours, he could be sued by the federal government for violation of the Twenty-Eight Hour Law, while a state prosecution could be had simultaneously . . . ."). "The fact of a common end hardly neutralizes conflicting means, and the fact that some companies may be able to comply with both sets of sanctions does not mean that the state Act is not at odds with achievement of the federal [policy]." Crosby, 530 U.S. at 379-80 (internal citation omitted). Conversely, "identity of ends"

does not foreclose preemption analysis. Id. at 379 n. 13. A state statute could further the same policy as the federal law, but could conflict with the federal law in the implementation of its goal. Id. (citing CTS Corp. v. Dynamics Corp. of America, 481 U.S. 69, 82-83 (where the Indiana state securities law conflicted with federal law in implementing its goal even though the Court found that it furthered the federal policy of investor protection)).

Here, it may be argued that the state anti-cruelty statute furthers the same policy or has the same end goal as the Twenty-Eight Hour Law. However, the implementation of the Floridina statute conflicts with federal law in imposing additional burdens on interstate commerce that Congress sought to avoid in passing the Twenty-Eight Hour Law, as discussed supra Part III.A.

It is additionally no help to Floridina that the Twenty-Eight Hour Law contains no express preemption of state law. (See Mem. Op. 8.) (finding no explicit instruction against state legislation in the Twenty-Eight Hour Law). In Crosby, the Court rejected the state's argument that failure of Congress to explicitly preempt the state law demonstrates implicit permission. Crosby, 530 U.S. at 386-87. The Court found that "a failure to provide for preemption expressly may reflect nothing more than the settled character of implied preemption doctrine that courts will dependably apply, and in any event, the existence of conflict cognizable under the Supremacy Clause does not depend on express congressional recognition that federal and state law may conflict." Id. at 387-88 (citing Hines v. Davidowitz, 312 U.S. 52, 67 (1941)). The fact that the Twenty-Eight Hour Law contains no express preemption by no means forecloses the possibility of other types of preemption.

The Supremacy Clause of the U.S. Constitution bars Appellant's conviction under the Floridina anti-cruelty statute because the state statute is preempted by the federal Twenty-Eight

Hour Law. The doctrines of obstacle and field preemption apply against the application of the Floridina anti-cruelty law to Appellant. Obstacle preemption must be found here because the Floridina statute stands as a barrier to carrying out the Congressional policies behind the Twenty-Eight Hour Law. Field preemption must be found here because legislative history indicates an intention to regulate interstate commerce and displace state police powers.

CONCLUSION

For the reasons stated above, the decision of the Stinsonia District Court should be upheld on the issue of whether a chicken is an "animal" under the Twenty-Eight Hour Law. However, the District Court's ruling that the Twenty-Eight Hour Law does not preempt Floridina's anti-cruelty statute should be reversed. Accordingly, this Court should overturn Mr. Williams' conviction and dismiss his indictment, as there is no genuine issue as to material fact and Mr. Williams is entitled to exoneration.

APPENDIX

United States Constitution, Article I, Section 8, Clause 3

[The Congress shall have Power] [t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes[.]

United States Constitution, Article VI, Clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The Twenty-Eight Hour Law, 49 U.S.C. § 80502 (2006)

Transportation of Animals

(a) Confinement.--(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

(2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for--

(A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and

(B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours.

(3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection.

(b) Unloading, feeding, watering, 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. The owner or person having custody of the animals shall feed and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals--

(1) shall feed and water the animals at the reasonable expense of the owner or person having custody, except that the owner or shipper may provide food;

(2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and

(3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section.

(c) Nonapplication.--This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest.

(d) Civil penalty.--A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that

knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least $100 but not more than $500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.

Floridina Cruelty to Animals Law, 8 FRS § 621

“Animal cruelty” is committed by every person who directly or indirectly causes any animal to be (a) overdriven, overworked, tortured, or tormented; (b) deprived of necessary sustenance, drink, shelter or protection from the weather; (c) denied of adequate exercise, room to lie down, or room to spread limbs, or (d) abused.