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Cr. No. 08-1028

IN THE STATE OF FLORIDINA

Court of Appeals Division Three

THE PEOPLE OF FLORIDINA,

Respondent / Cross-Appellant,

-against-

JEFFREY WILLIAMS,

Appellant / Cross-Respondent.

January 5, 2008

BRIEF FOR APPELLANT

Team 14

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STATEMENT OF THE ISSUES

I. Does the term "animals" in the Twenty-Eight Hour law include chickens?

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

STATEMENT OF THE FACTS

Appellant, Jeffrey Williams ("Williams"), is the sole proprietor of Truckin Chickens. His work involves the routine transportation of live birds in large tractor-trailer trucks. Currently, Williams has undertaken the movement of spent hens. Spent hens are chickens formerly used in egg production that can no longer lay eggs and have no obvious market value. Many farmers, therefore, simply dispose of these hens in dumpsters to be discarded like other industrial trash. However, this method of disposal endangers the environment and increases human health hazards due to the number of spent hens disposed.

As an alternative, Williams offers to collect these hens from farmers without charge. Williams ultimately sells the spent hens to the United States Department of Agriculture ("USDA"), providing the spent hens as food in school lunch programs. However, because Williams receives no payment for his collection and removal services, he is forced to make the most of each trip and packs approximately ten thousand chickens in a tractor-trailer truck for each run. Although Williams always passes through at least two states during each trip, he never takes more than twenty-four hours to reach his destination. The brevity of each run means that Williams can make it to his destination without stopping and incurring additional fees. In addition, the spent hens' confinement is kept to a minimum.

During a routine trip to New York in 2008, Williams was stopped on a Floridina highway for a broken taillight. After inspecting the truck's cargo, the patrol officer observed a number of dead and live chickens, as well as some chickens that appeared unable to stand upright. The officer consulted with the local animal control officer who concluded that the conditions violated Floridina's Cruelty to Animals Law. 8 FRS §§ 621(a)-(d). See Appendix A.

As a result, Williams was charged with forty-five counts of cruelty to animals under the state statute. Williams stipulated to all of the above-mentioned facts. He moved to dismiss his indictment, asserting that the State was barred from prosecuting him because his conduct was in accordance with the prevailing federal law, the Twenty-Eight Hour Law ("Act"). 49 U.S.C. § 80502. See Appendix B. Williams argues that the Twenty-Eight Hour Law clearly governs the transportation of all "animals," including chickens. In addition, he maintains that the regulatory scheme of the Twenty-Eight Hour Law is so pervasive as to preempt state interference. The State, however, argues that there is no issue of preemption and that chickens are not "animals" under the Twenty-Eight Hour Law.

In addressing the above issues, the Stinsonia District Court held that: (1) chickens are "animals" under the Twenty-Eight Hour Law; and (2) the Twenty-Eight Hour Law does not preempt Floridina's Cruelty to Animals Law. Williams' conviction was consequently upheld.

SUMMARY OF ARGUMENT

The Twenty-Eight Hour Law applies to the transportation of chickens and preempts the application of Floridina's Cruelty to Animals Law for the following two reasons: (1) the statutory scheme of the Twenty-Eight Hour Law evinces Congress' intent that the term "animals" be broadly construed to include chickens; and (2) the pervasive nature of the Twenty-

Eight Hour Law illustrates congressional intent to occupy the entire field of regulation and subordinates state law.

The word "animals" under the Twenty-Eight Hour Law includes chickens. This interpretation is congruent with the plain meaning of the term and consistent with the Act's statutory scheme. As the lower court noted, "animals" includes chickens. This construction is supported by both the ordinary dictionary definitions, as well as under generally accepted scientific classifications. Moreover, the statutory purpose, history and context, requires a broad interpretation of "animals" to include chickens. These sources evince Congress' intent that the Twenty-Eight Hour Law be construed broadly to protect all animals against inhumane treatment during transit. This Court must therefore affirm the Stinsonia District Court, and hold that "chickens" are animals under the Twenty-Eight Hour Law.

Within our system of government, federal law is paramount to state law. The supremacy of federal law ensures that Congress can employ its constitutionally delegated powers to serve the nation as a whole. It also ensures that the states cannot interfere with the exercise of these powers by legislating independently of one another. The power of Congress to regulate interstate commerce under the Constitution guarantees that no state can unduly influence, burden or obstruct the stream of commerce among the states. In this case, Congress has acted pursuant to this power to regulate the humane treatment of animals in interstate transit through a comprehensive statutory framework. This scheme evidences intent to occupy this field of legislation. Additionally, the power of Congress to regulate in this arena is supreme over that of the State's. As enforcement of Floridina's Cruelty to Animals Law would frustrate the purposes and objectives of Congress, it must yield to the Twenty-Eight Hour Law.

ARGUMENT

I. CHICKENS ARE INCLUDED WITHIN THE MEANING OF "ANIMALS" UNDER THE TWENTY-EIGHT HOUR LAW

As the Stinsonia District Court held, under the Twenty-Eight Hour Law, the term "animals" includes chickens. (R. at 7.); 49 U.S.C. § 80502 (1994). In interpreting statutory language, courts start with the plain meaning of the term. United States v. Alvarez-Sanchez, 511 U.S. 350, 356 (1994). However, plain meaning alone is not controlling and must be analyzed in conjunction with the statutory scheme. "Where the statutory language is clear *and* consistent with the statutory scheme at issue, the plain language of the statute is conclusive and the judicial inquiry is at an end." Molski v. M.J. Cable, Inc., 481 F.3d 724, 732 (9th Cir. 2007) (citations and quotations omitted) (emphasis added). Here, the plain meaning of "animals" and the statutory scheme of the Twenty-Eight Hour Law both give rise to the conclusion that chickens are "animals."

A. The Plain Meaning Of The Term "Animals" Includes Chickens

Statutory terms are generally interpreted in accordance with plain meaning, unless otherwise defined. See Gonzales v. Carhart, 550 U.S. 124, 127 S. Ct. 1610, 1630 (1994); see also BP Am. Prod. Co. v. Burton, 127 S.Ct. 638, 643 (2006). Courts "follow the common practice of consulting dictionary definitions to clarify the [word's] ordinary meaning and look to how the terms were defined *at the time the statute was adopted.*" United States v. TRW Rifle, 447 F.3d 686, 689 (9th Cir. 2006) (internal citations omitted) (emphasis added) (citing Webster's Dictionary from 1961 for definition of term in 1968 statute and noting "'[t]he most relevant time for determining a statutory term's meaning' is when the statute became law"); see also Regents of the Univ. of California v. Pub. Employment Relations Bd, et. al., 485 U.S. 589, 598 (1988) (referencing "dictionary from period during which…exception was enacted" to define

"compensation"); Molzof v. United States, 502 U.S. 301, 307 (1992) (consulting "[l]egal dictionaries in existence when the FTCA was drafted and enacted" to define "punitive damages"); United States v. Lopez, 514 U.S. 549, 586 (1995) (citing 1770's dictionaries for meaning of "commerce") (Thomas, C., concurring); People v. Modesto Ruiz Baniqued, 85 Cal. App. 4th 13, 20 (Cal. App. Ct. 2000) (referencing Webster's Dictionary's meaning of "dumb" and "creatures" to conclude that statutory language "dumb creatures" included roosters and other birds).

In 1994, the Twenty-Eight Hour Law was repealed and reenacted with the following change: the phrase "cattle, sheep, swine and other animals" was replaced with "animals." Pub. L. No. 103-272, § 1(e), 108 Stat. 1356 (1994); 49 U.S.C. § 80502(a). In interpreting the meaning of the word "animals," the lower court cited to Webster's Dictionary and noted that "animals" was defined to mean:

> [a]ny living thing typically having certain characteristics distinguishing it from a plant, [such] as the ability to move voluntarily, the presence of a nervous system and greater ability to respond to stimuli, the need for complex organic materials for nourishment obtained by eating plants or other animals and the delimitation of cells usually by membrane rather than cellulose wall.

Webster's Encyclopedic Unabridged Dictionary of the English Language 59 (New Rev. Ed. 1996); (R. at 4.) Chickens are unquestionably "animals" under this definition. Chickens move about at will and eat grain, insects and even larger animals such as lizards or young mice. They possess a nervous system and the ability to respond to stimuli. The "ordinary and natural" meaning of the word "animals" therefore includes chickens. TRW Rifle, 447 F.3d at 689. The lower court acknowledged that there has been disagreement among state courts in deciding whether chickens fall within the ordinary meaning of animals. See State of Kansas v. Claiborne, 505 P. 2d 732, 735 (Kan. 1973) (noting "in the common everyday experience of mankind chickens are seldom thought of as animals"); cf. State v. Buford, 65 N.M. 51, 59 (N.M. 1958)

(concluding gamecocks are included in prohibition of the torture and torment of animals). Despite this disagreement, the lower court ultimately held that chickens are animals for purposes of statutory interpretation. (R. at 7.) Moreover, within the scientific classification, chickens are undeniably "animals" as chickens are part of the kingdom *Animalia*. See, e.g., Afaf Al-Nassar, et. al., Overview of Chicken Taxonomy and Domestication, 63 World's Poultry Sci. J. 285 (2007); Geordie Duckler, The Economic Value of Companion Animals: A Legal and Anthropological Argument for Special Valuation, 8 Animal L. 199, 201 (2002). Thus, the scientific classification corresponds to the dictionary definition, lending further credence to the conclusion that "animals" includes chickens.

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Accordingly, the broad, plain language chosen by Congress in amending the Twenty-Eight Hour Law in 1994 makes clear that the statute covers all "animals," including chickens. 49 U.S.C. § 80502(a); Webster's Dictionary (New Rev. Ed. 1996); see also Hughes Aircraft Co. v. Jacobson, 525 U.S. 432, 438 (1999) (stating that statutory analysis begins with statutory language and "where the statutory language provides a clear answer, it ends there as well"). More importantly, no case has interpreted the current language of the Twenty-Eight Hour Law to exclude chickens.

As such, this Court should affirm the holding of the lower court in part, and "give effect to the unambiguously expressed intent of Congress" by holding that the Twenty-Eight Hour Law's protection of "animals" includes chickens. Chevron U.S.A., Inc. v. Natural Resources Def. Council, Inc., 467 U.S. 837, 843 (1984); 49 U.S.C. § 80502(a).

B. Construing The Term "Animals" To Include Chickens Is Consistent With The Statutory Scheme Of The Twenty-Eight Hour Law

Even if this Court were to find that "animals," as used in the Twenty-Eight Hour Law, is ambiguous, an examination of the legislative history and purpose shows that the inclusion of

chickens within the statute is "clear *and* consistent with the statutory scheme." Molski, 481 F.3d at 732 (emphasis added). The statutory scheme is determined by examining the statutory text in its entirety, considering the purpose and context of the statute, as well as consulting any precedent or authorities that may inform the analysis. Dolan v. United States Postal Serv., 546 U.S. 481, 486 (2006); see also Crandon v. United States, 494 U.S. 152, 158 (1990) (noting that meaning of statute must be determined by looking to "design of the statute as a whole and to its object and policy").

Here, the statutory scheme of the Twenty-Eight Hour Law requires a broad interpretation of "animals" to include chickens for the following three reasons: (1) the statute was designed to protect animals from inhumane conditions during transit, an objective that applies to chickens; (2) the overall text and language of the statute is framed in a broad manner, evincing the congressional intent to protect all animals, including chickens; and (3) public policy considerations require that federal law regulate the transportation of chickens to ensure sanitary and health conditions.

1. Including Chickens Within The Term "Animals" Is Consistent With The Statutory Purpose Of Ensuring The Humane Treatment Of Animals During Transit

The purpose of the Twenty-Eight Hour Law is to ensure the humane treatment of animals. See United States v. Oregon R. & Nav., 163 F. 640, 640 (Or. C.C. 1908) (stating Twenty-Eight Hour Law "springs from the promptings of humanity to guard against the cruel treatment of animals in their handling and care"); United States v. N. Pac. Terminal Co., 181 F. 879, 880 (D. Or. 1909), rev'd on other grounds, 184 F. 603 (9th Cir. 1911) (holding that Twenty-Eight Hour Law was enacted to prevent inhumane abuse of animals). This objective—the protection of animals—is clearly evinced by the law's history and language. Despite various

repeals, reenactments and amendments, this purpose has been consistent and continues to exist today.

Originally enacted in 1872, the Twenty-Eight Hour Law was in response to the public outcry over the inhumane treatment of cattle during transportation. Emily Stewart Leavitt, Animals and Their Legal Rights, 29-30 (2d ed. 1970). The objectionable treatment of cattle was made known through a series of newspaper articles. Id. at 30. The articles reported that animals were subject to extreme temperatures, overcrowded vehicles, and lack of food and water. Nicole Fox, The Inadequate Protection of Animals Against Cruel Animal Husbandry Practices Under United States Law, 17 Whittier L. Rev. 145, 159 (1995). These conditions prompted Congress to enact the Twenty-Eight Hour Law, expressly stating that its purpose was "to prevent cruelty to animals while in transit." Law of June 29, 1906 ch. 3594, § 3413, Pub. L. No. 340-59, 34 Stat. 607. Notably, the current statutory language expressly requires that "[a]nimals being transported shall be unloaded in a *humane way*." 49 U.S.C. § 80502(b) (emphasis added). Thus, it is clear that since its inception, the Twenty-Eight Hour Law's consistent purpose has been to ensure the welfare of animals.

2. Congress Intended "Animals" To Be Broadly Construed To Include Chickens Under The Twenty-Eight Hour Law's Protection

Although the catalyst for the Twenty-Eight Hour Law was the plight of cattle, Congress nonetheless adopted broad language in the original enactment, requiring that "cattle, sheep, swine and *other animals*" should not be transported for over twenty-eight hours without an opportunity for rest. 45 U.S.C. § 71 (1993) (repealed 1994) (emphasis added). The language therefore contemplated the eventual expansion of statutory protection beyond those animals specifically enumerated. See Chesapeake & O. Ry. Co. v. Amer. Exch. Bank, 23 S.E. 935, 937 (Va. 1896). This expansion was realized in 1994 when Congress replaced the phrase "cattle,

sheep, swine and other animals" with "animals." Pub. L. No. 103-271 § 1(e), 108 Stat. 1356, (1994); see also 49 U.S.C. § 80502(a). By removing the restrictions of "cattle, sheep, swine…," Congress evinced its intent to expand the scope of the statutory scheme and further its primary objective of ensuring animal welfare.

The State argues that the replacement of "cattle, sheep, swine and other animals" with "animals" was merely an elimination of unnecessary words. (R. at 5-6.) Under the State's interpretation, the Twenty-Eight Hour Law would be rendered useless as it would not apply to the overwhelming majority of animals in transit. Over ninety percent of the ten billion animals used within the nation's agriculture industry are chickens. Veronica Hirsch, Animal Legal & Historical Center, Overview of the legal Protections of the Domestic Chicken in the United States and Europe, Michigan State University, Detroit College of Law (2003).[1] These animals would be subject to the inhumane conditions; the very conditions that the statute set out to prevent. The State's position frustrates the very purpose of the statute, to protect animal welfare.

Moreover, even under the original language "other animals," courts have interpreted the Twenty-Eight Hour Law to apply to "all animals that might be shipped in crowded cars or boats, and which would suffer also for want of food, water, or rest." Chesapeake & O. Ry. Co., 23 S.E. at 937. "Animals" is not the only language in the Twenty-Eight Hour Law to require the inclusion of chickens. The Act also states that a carrier "may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest." 49 U.S.C. § 80502(a). It further provides that the Act does not apply to animals "transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest." 49 U.S.C. § 80502(c). It can be construed from this exception that animals, such as fish, would not be subject to the Twenty-Eight Hour Law, as fish do not need to be

[1] Available at http://www.animallaw.info/articles/ovuschick.htm (last visited Jan. 4, 2008).

unloaded, rested, watered, and fed. Chickens, however, are subject to the Twenty-Eight Hour Law. Chickens are just as susceptible as cattle, sheep and swine to extreme temperatures, overcrowding, and lack of food and water during transportation. See Fox, supra, at 159. The inclusion of chickens within "animals" is clearly consistent with the Twenty-Eight Hour Law's scheme and there is no basis for an arbitrary exclusion of chickens.

Furthermore, the U.S. Supreme Court has held that when the plain language of the statute does not provide for any exemptions, a court cannot read exemptions into the provision. See Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687, 697 (1995); see also Saipan Stevedore Co. v. Director, Office of Workers' Comp. Programs, 133 F.3d 717, 722 (9th Cir. 1998). In Babbitt, the U.S. Supreme Court considered whether "take" under the Endangered Species Act included habitat destruction as well as trapping and killing animals. The Court declined to limit "take" as referring only to "direct" killings because neither the statute nor dictionary definition limited that term "take" to "direct" takes. 515 U.S. at 697. The Ninth Circuit also used plain language to find that a group of discrete islands fell under the term "territories" because Congress did not qualify or restrict the term "territories" in a respective statute. Saipan Stevedore Co., 133 F.3d at 722. Similarly, the Twenty-Eight Hour Law must be interpreted broadly because it imposes no qualifications or restrictions on the term "animals" that would support the State's exclusion of chickens. 49 U.S.C. § 80502(a).

In contrast, two prominent federal animal welfare statutes have clearly articulated exemptions within their statutory schemes. Both the Animal Welfare Act ("AWA"), 7 U.S.C. § 2132 (2002), and the Humane Methods of Slaughter Act ("HMSA"), 7 U.S.C. § 1901 (1996), have expressly enumerated certain species that are exempt from protection. The AWA governs the humane care, handling, treatment and transportation of animals in certain situations. 7 U.S.C.

§ 2132. However, the AWA expressly provides that not all animals are protected. Under the AWA, the term "animal" means "any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal…but such term excludes…other farm animals, such as, but not limited to livestock or poultry…." 7 U.S.C. § 2132(g). Similarly, the HMSA is clear that not all "livestock" are protected under its provisions. 7 U.S.C. § 1901. The HMSA states that "the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods." Id. However, the regulations specifically provide that the HMSA does not "authorize[] the Secretary of Agriculture to regulate the routine or regular transportation, to slaughter or elsewhere, of…poultry." Enforcement of Humane Methods of Slaughter Act of 1958, Pub. L. No. 107-171, Title X, § 10305, 116 Stat. 493 (2002). Congress has placed no comparable limitations on the term "animals" as used in the Twenty-Eight Hour Law.

The lack of limiting language, qualifying terms and other restrictions on the word "animals" in the Act, evidence Congress' intent for "animals" to be broadly construed. Precluding chickens from the term "animals" would be inconsistent with Congress' intended statutory scheme. Consequently, "animals" must be interpreted to include chickens, as "animals" replaced the more restrictive language of "cattle, sheep, swine, or other animals." See Amy Mosel, What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production, 27 Dayton L. Rev. 133, 140 (2001).

3. Public Policy Concerns Necessitates A Broad Interpretation Of Chickens To Include "Animals"

Three public policy considerations support the inclusion of chickens under "animals." First, the conditions that animals endure during transportation affect the health risks faced by

consumers. These risks are especially stark in this case where the spent hens are used in school lunch programs. (R. at 1.) During transportation, chickens are subject to overcrowding and unsanitary conditions, often found emancipated, diseased, and dead. See Fox, supra, at 159. The health risks involved increase when chickens are contained under these conditions for prolonged periods of time. Id. The Twenty-Eight Hour Law is therefore necessary to help minimize the health dangers. The required unloading, watering, feeding and resting of animals give carriers the opportunity to clean out trucks and empty waste.

Second, the Twenty-Eight Hour Law is one of only two federal statutes pertaining to the treatment of agricultural animals, the other being the HMSA. 7 U.S.C. § 1901; Gaverick Matheny and Cheryl Leahy, Farm-Animal Welfare, Legislation, and Trade, 70 Law & Contemp. Prob. 325, 334 (2007). However, as previously noted, the HMSA expressly excludes chickens from protection. Enforcement of Humane Methods of Slaughter Act of 1958, § 10305. The Twenty-Eight Hour Law is therefore the only remaining protection available for chickens. As poultry farming constitutes more than ninety percent of the ten billion animals in agriculture, this protection is essential; otherwise the vast majority of animals in transit would be unregulated and unprotected. Hirsch, supra.

Third, the economic interests of poultry owners benefit from the inclusion of chickens under the Twenty-Eight Hour Law. The statute would set a consistent federal standard for all poultry shipments. This would reduce the costs associated with complying with a myriad of conflicting state laws, while also ensuring that the animals transported maintain their health and value. This is particularly true here, where Williams is merely a sole proprietor. (R. at 1.) He cannot efficiently account for and comply with every state statute that he might encounter.

Chickens should therefore be included in "animals" under the Twenty-Eight Hour Law. This construction is consistent with the plain meaning and statutory scheme of the law. Moreover, the inclusion of chickens under the Act would create much needed regulation for the transportation of chickens. It would alleviate the health risks inherent in the unsanitary transportation of chickens and set an identifiable, uniform standard of compliance. For the foregoing reasons, this Court should affirm the lower court's decision in part and hold that chickens are included under the term "animals" within the Twenty-Eight Hour Law.

II. THE TWENTY-EIGHT HOUR LAW PREEMPTS THE ENFORCEMENT OF FLORIDINA'S CRUELTY TO ANIMALS LAW AS APPLIED TO ANIMALS IN INTERSTATE TRANSIT

The balance of power between the states and the federal government is guaranteed by the constitutional grant of supremacy to federal law. U.S. Const. art. VI, cl. 2. The Supremacy Clause has given rise to the doctrine of preemption, under which federal action subordinates state action in regulating and legislating within the same areas. Id. It is well established that federal law is paramount and that Congress has the power to preempt state law. See Cipollone v. Liggett Group, Inc., 505 U.S. 504 (1992). Constitutional jurisprudence recognizes three types of federal preemption: express, field and conflict. English v. General Electric, Co., 496 U.S. 72, 78-80 (1990). In this instance, the Twenty-Eight Hour Law, preempts enforcement of Floridina's Cruelty to Animals Law under both the doctrines of field and conflict preemption. Because federal law supplants state law, and there is no factual dispute that Williams was in compliance with the Twenty-Eight Hour Law, his conviction under Floridina's Cruelty to Animals Law must be reversed and his indictment dismissed. (R. at 2.)

The applicability of the Supremacy Clause requires that the subject sought to be legislated is within the constitutional control of Congress, that Congress has the right to assume

exclusive jurisdiction over it, and that Congress has manifested an intention to deal with the subject in full. United States v. Carolene Products Co., 304 U.S. 144 (1938); Hamilton v. Kentucky Distilleries & Warehouse Co., 251 U.S. 146 (1919); Commonwealth v. Nickerson, 236 Mass. 281 (Mass. 1920). When state law exists that seeks to regulate the same subject matter, a court must decide whether the application of the state statute would frustrate the purposes of the federal statute, requiring preemption of the state law. Chicago and N.W. Transp. Co. v. Kalo Brick & Tile Co., 450 U.S. 311 (1981).

Although the Stinsonia District Court recognized four types of preemption, (R. at 8), the U.S. Supreme Court has acknowledged that these categories are not rigid. Hines v. Davidowitz, 312 U.S. 52, 67-68 (1941). The Court has defined three broad and flexible categories of preemption. English, 496 U.S. at 80. First, Congress can explicitly preempt state law by declaring preemptive intent, which is referred to as express preemption. Id. at 78; Jones v. Rath Packing Co., 430 U.S. 519 (1977). Second, under the doctrine of field preemption, "state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively." English, 496 U.S. at 79; Rice v. Santa Fe Elevator Corp., 331 U.S. 218 (1947). Field preemption is established when Congress demonstrates an intent to occupy a field of regulation, thereby removing such regulatory power from the states. Where Congress has not expressed a clear intention to preempt state regulation, federal preemption may still be implied. Bethlehem Steel Co. v. N.Y. State Labor Relations Bd., 330 U.S. 767, 772 (1947) (quoting Napier v. Atlantic Coast Line Ry. Co., 272 U.S. 605 (1926)) ("Exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting."). Finally, under conflict preemption, state law is preempted to the extent that it actually conflicts with federal law. English, 496 U.S. at 79; Florida Lime & Avocado

Growers, Inc. v. Paul, 373 U.S. 132 (1963). Obstacle preemption is a variant of conflict preemption. Hines, 312 U.S. at 67. Where state and federal law can be simultaneously applied, but the state law would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," state law may be preempted. English, 496 U.S. 79, (quoting Hines, 312 U.S. at 67).[2]

The U.S. Supreme Court has employed a variety of tests to determine where federal preemption exists, and found that "there can be no one crystal clear distinctly marked formula." Hines, 312 U.S. at 67. "It is often a perplexing question whether the Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except as the state and federal regulations collide." Rice, 331 U.S. at 231. Preemption analysis is therefore a fact-based undertaking. The court's function is to determine whether, in allowing enforcement or application of state law, "the purpose of the [federal] act [could not] be accomplished—if its operation within its chosen field [would] be frustrated." Savage v. Jones, 225 U.S. 501, 553 (1912). The primary focus of this analysis is always the intent of Congress in making the law in question. Hillsborough County, Fla. v. Automated Med. Labs., Inc., 471 U.S. 707, at 714 (1985). Because this is a subjective analysis, there is no set formula, but two basic methods have evolved for determining whether federal law preempts state action.

Most preemption jurisprudence has considered acts of Congress that do not expressly preempt state action, such as the Twenty-Eight Hour Law. Where Congress expressly preempts state law, there is no analysis to undertake. When state and federal laws conflict such that they cannot be simultaneously applied, the only analysis necessary is to determine to what extent

[2] It has been suggested that field preemption is also a form of conflict preemption. The lines between the implied preemption doctrines are not always clear, but these category labels will be used in this brief for clarity. See English, 496 U.S. at 79 n.5 (1990).

federal law will supersede state law. Where there is neither written preemptive intent, nor an outright conflict between the laws, the U.S. Supreme Court has established standards for analyzing preemption under the implied preemption doctrines of field and conflict preemption. The first analysis is for field preemption, and is derived from the holding in Rice, which states that where "the scheme of federal regulation [is] so pervasive **as to make reasonable the inference** that Congress left no room for the states to supplement it," preemption exists. 331 U.S. at 230. The prevailing test for obstacle preemption, as a form of conflict preemption, was established in Hines and states that where a state statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," preemption exists. 312 U.S. at 67. Under both of these tests, the Twenty-Eight Hour Law preempts enforcement of Floridina's Cruelty to Animals Law.

A. Congress Left No Room For The States To Supplement The Twenty-Eight Hour Law

The provisions of the Twenty-Eight Hour Law are so pervasive, that it is clear Congress intended the Act to occupy the entire field of regulating animal welfare in interstate transit. In Rice, the U.S. Supreme Court considered whether the state of Illinois could supplement federal regulation of grain warehouses with additional state licensing and operational requirements. 331 U.S. at 222-225. There was no direct conflict between the federal and state regulations, but the state regulatory scheme imposed additional requirements on warehouse operators. The Court held broadly that where the state asserts a right to regulate in an area already occupied by federal regulation, "the federal scheme prevails [even if] it is a more modest, less pervasive regulatory plan than that of the State." Id. at 236.

The principles outlined in Rice have been applied in determining the effect of the Twenty-Eight Hour Law on state animal cruelty statutes. Specifically, in People v. Southern

Pacific Co., the California Fifth District Court of Appeal considered whether the Twenty-Eight Hour Law precluded the application of provisions of the California Penal Code which set standards for the feeding and water of animals.[3] 208 Cal.App.2d 745, 746 (Cal. App. Ct. 1962).[4] The defendant rail carrier in that case was transporting cattle from Utah to California. Before delivering the cattle to the consignee, the carrier left the cattle sitting on the tracks at their destination without food and water for a period of time. The defendant was charged with violating the relevant provisions of the California Penal Code. Id. at 747.

In reviewing the grant of a demurrer to the defendant, the District Court of Appeal found that enforcement of the California statute had been precluded by the federal statutory scheme. Specifically, the court stated:

> 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.

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[3] Cal. Penal Code § 597 (West 2008)
(b) Except as otherwise provided in subdivision (a) or (c), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink, or shelter, cruelly beats, mutilates, or cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink, shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the animal, or in any manner abuses any animal, or fails to provide the animal with proper food, drink, or shelter or protection from the weather, or who drives, rides, or otherwise uses the animal when unfit for labor, is, for every such offense, guilty of a crime punishable as a misdemeanor or as a felony or alternatively punishable as a misdemeanor or a felony and by a fine of not more than twenty thousand dollars ($20,000).

[4] There are no more recent cases regarding the effect of the Twenty-Eight Hour Law on state animal cruelty laws. This is most likely because relevance of the Twenty-Eight Hour Law was greatly diminished throughout the latter half of the twentieth century; the law was interpreted to apply only to rail carriers and not trucks, and most animal transportation was accomplished by truck. The United States Department of Agriculture publicly reversed this position in 2006, in a letter to the Humane Society of the United States. See, Gaverick Matheny & Cheryl Leahy, Farm-Animal Welfare, Legislation, and Trade, 70 Law & Contemp. Probs. 325, 335 n.69 (2007).

Id. at 745. The determination in this case regarding the preemption of Floridina's Cruelty to Animals Law by the Twenty-Eight Hour Law must follow the reasoning applied in Southern Pacific. 208 Cal.App.2d 745. The fundamental facts of the case are almost indistinguishable. Williams has been convicted of violating a state anti-cruelty statute while transporting animals as part of the stream of interstate commerce. There is no factual dispute that he was transporting his cargo of chickens between more than two states. (R. at 2.)

The federal legislation at issue is the same, and the regulatory scheme as pervasive as it was when Southern Pacific was decided. Under the authority of the Twenty-Eight Hour Law, the USDA has promulgated regulations regarding the specific amounts and intervals of feeding for livestock being transported. The regulations specify how long the animals should rest outside of the vehicle. The regulations even specify what type of water is suitable for consumption by animals being transported, and that "in cold weather, the water should be free from ice." 9 C.F.R. §§ 89.1-89.5 (2008).

The Twenty-Eight Hour Law must preempt state action in this case, even though setting standards for the humane treatment of animals is an area traditionally left to the states. DeHart v. Town of Austin, Ind., 39 F.3d 718 (7th Cir. 1994); Kerr v. Kimmel, 740 F.Supp. 1525 (D.Kan. 1990); Cresenzi Bird Importers, Inc. v. State of New York, 658 F.Supp 1441 (S.D.N.Y. 1987). The U.S. Supreme Court in Rice held that Congress had the power to supersede the state's historic police power because the intent to do so was evident from the pervasive nature of the federal enactment. 331 U.S. at 230. In applying this same principle, the court in Southern Pacific weighed the state interest in regulating against the federal interest. Finding that the state interest was subordinate to the federal, the court stated that if the state statute was found unconstitutional, under the Supremacy Clause, "no great industry of the state [would] be threatened, no economic

loss [would] follow, and neither the lives, property nor welfare of state citizens [would] be affected." 208 Cal.App.2d at 750.

The state and federal interests are also the same. The State asserts the right to regulate this subject under its historic police powers, in contravention of the constitutional grant of power to Congress to regulate interstate commerce. U.S. Const. art. I, § 8, cl. 3. There is no question that the application of Floridina's Cruelty to Animals Law has frustrated the intent of Congress to maintain a uniform system of regulation to promote the seamless flow of commerce among the states. While acting in accordance with the federal statutory scheme, Williams' contribution to the flow of commerce and his own livelihood have been obstructed by his arrest and criminal conviction. The national interest in promoting and protecting interstate commerce must preclude the application of Floridina's Cruelty to Animals Law.

The Stinsonia District Court distinguished this case from Southern Pacific, relying on two early cases interpreting the Twenty-Eight Hour Law. (R. at 10.); Lynn v. Mellon, 131 So. 458 (Ala. Ct. App. 1930); Hogg v. Louisville & Nashville R.R. Co., 127 S.E. 830 (Ga. Ct. App. 1925). The court read these cases as supporting a narrow reading of the Twenty-Eight Hour Law that was "doctrinally, if not directly, in conflict" with Southern Pacific. (R. at 10.) Both cases concerned tort claims for property damage against railroad companies in whose care livestock had been injured. The claims in both cases were for negligence. Both courts held that compliance with the Twenty-Eight Hour Law was not an absolute defense to negligence for defendant carriers. Lynn, 131 So. at 460; Hogg, 127 S.E. at 832.

Both of these cases are so factually and legally dissimilar from the case at hand, that they are not persuasive as to the proper application of the Twenty-Eight Hour Law. This case is not a civil action for recovery of damages related to injury to private property, but a criminal action

initiated by the government. (R. at 2.) Thus, while the courts in Lynn and Hogg properly established the relationship between the Twenty-Eight Hour Law and common law duties of common carriers to animals in transit, neither court had anything to say regarding the impact of the Twenty-Eight Hour Law on criminal liability for animal cruelty. This case is not about a common law duty of care, but the imposition of criminal liability.

Similarly, the Stinsonia District Court reasoned that field preemption would only exist if "Congress intended to prevent *any and* every state law application in a particular area," relying on Hillsborough. (R. at 9.) This reliance on Hillsborough is misplaced. First, this case is distinguishable from Hillsborough because the conflict between the state and federal laws was found to be "too speculative" in that case. 471 U.S. at 720. Here, there is no doubt that the application of the state law is interfering with the purpose of the federal law. Inasmuch as the Twenty-Eight Hour Law is designed to enhance the regulation of interstate commerce, the enforcement of the Floridina's Cruelty to Animals Law clearly interferes with that goal by impeding the flow of interstate commerce.

Additionally, the construction of the preemptive intent analysis in Hillsborough has been rejected by the U.S. Supreme Court in subsequent decisions. In Geier v. American Honda Motor Co., the Court rejected the notion that evidence of preemptive intent was required to establish preemption. 529 U.S. 861, 883 (2000). The Court in that case reinforced the idea that intent could be ascertained from the nature of the legislation itself. Id. In this case, the intent of Congress to occupy the field of setting standards of care for animals in transit can be inferred from the comprehensive nature of the Twenty-Eight Hour Law and the regulations promulgated under its authority.

B. The Floridina Anti-Cruelty Statute Stands As An Obstacle To The Accomplishment And Execution Of The Full Purposes And Objectives Of Congress

If the Court determines that the Twenty-Eight Hour Law and its regulatory scheme are not so comprehensive as to evince Congressional intent to preempt state action, preemption must still be recognized under the obstacle preemption rule articulated in Hines. 312 U.S. 52. The U.S. Supreme Court created a two-part preemption analysis in Hines: (1) a determination of whether there are "equal and continuously existing concurrent power[s] of state and nation," Id. at 61; and (2) whether Congress "has acted in such a manner that its action should preclude enforcement of [the state] law." Id. at 69. Where the federal power to regulate is clearly superior to that of the state, the federal law is supreme, and "[i]f the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field [] must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power." Id. at 68.

1. The State Power To Regulate In This Arena Is Not Equal And Continuously Existing Concurrent To The Federal Power And Is Subordinate To Supreme National Law

The respective powers exercised by the State of Floridina and Congress are neither equal nor continuously existing. In Hines, the U.S. Supreme Court considered the implications of a federal alien registration statute on the enforcement of a Pennsylvania alien registration statute. 312 U.S. 52. The state statute imposed specific burdens on aliens within the state, requiring all aliens over age eighteen to register annually, provide personal information, pay an annual registration fee, and carry and produce a government identification card whenever demanded. Id. at 59. Subsequent to the enactment of the Pennsylvania statute, Congress enacted a similar federal law, prescribing registration requirements for aliens throughout the nation. Although the Pennsylvania statute had previously been found constitutional, the enactment of parallel federal

legislation was found to preempt the state law. The state legislation was enacted pursuant to state police powers, while the federal power was derived from the constitutional grant of power to Congress to act in the field of foreign relations. U.S. Const. art. II, § 2, cl. 2.

The U.S. Supreme Court found that the exercise of the federal power on this subject did not exclude the state power. Hines, 312 U.S. at 68. The Court held that federal power was supreme and therefore subordinated the state law. Id. It was highly relevant to the Court's determination that Congress was acting under an express constitutional grant of power, while the state was acting under reserved police powers. Id. at 64. The Court held that the imposition of specific burdens on aliens by individual states was a matter that impacted the "welfare and tranquility [sic] of all the states." Id. at 66. Because the Pennsylvania statute impacted the field of international relations, the Court declined to recognize it as simply an exercise of state police power. Id. at 66. The Court held that, "the act of Congress [] is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it." Id. at 66 (quoting Gibbons v. Ogden, 22 U.S. 1 (1824)). It was therefore held that the powers of the state and Congress to regulate within the field of international relations were not "equal and continuously existing concurrent" powers. Id. at 68.

The powers being exercised by Congress and the State of Floridina are similar to those considered in Hines. In this case, Congress is acting under an express constitutional grant of power, the Commerce Clause, U.S. Const. art. I, § 8, cl. 3, while Floridina is exercising its reserved police powers. Just as the U.S. Supreme Court in Hines was concerned about the impact of differing and conflicting laws regarding the rights and privileges of aliens across the nation, here this Court must be concerned with the impact of conflicting animal cruelty laws on interstate commerce. One of the primary purposes recognized by the U.S. Supreme Court for

committing the power to regulate interstate commerce to Congress is to "protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws and to insure uniformity in regulation." Pennsylvania v. West Virginia, 262 U.S. 553 (1923). This purpose is paramount to the functioning of the national economy and the vitality of the nation. To expect an industry to conform its business practice to the varying and competing laws of every state through which its products must travel en route to their destination is an unreasonable burden on interstate commerce. Though the power to enact the Floridina anti-cruelty statute is not disputed, it cannot be enforced against Williams, nor any other party operating in the realm of interstate commerce. The federal power to regulate interstate commerce in this case is supreme to the state power being exercised.

2. Congress Has Acted In Such A Way As To Preclude Enforcement Of Floridina's Cruelty To Animals Law

Where the federal power to legislate or regulate a specific subject is supreme, the Hines analysis requires a secondary determination of whether the exercise of that power precludes the state law's operation. 312 U.S. at 68-69. The U.S. Supreme Court stated that this determination should be based on consideration of "the nature of the power exerted by Congress, the object sought to be attained, and the character of the obligations imposed by the law." Id. at 70.

Consideration of these factors in the Hines case led the U.S. Supreme Court to conclude that Congress might validly enact a uniform system of alien registration requirements against the interests of the individual states. Id. at 73. The Court found that Congress had created a "broad and comprehensive plan" regarding the "terms and conditions upon which aliens may enter" the United States. Id. at 69. The Court noted a long history of federal involvement in regulating

alien registration and of popular political and social aversion to legislation perceived as discriminatory against aliens. Id. at 70-72.

A brief review of the history of the Twenty-Eight Hour Law reveals that federal power in this case can and has been exercised to the exclusion of state power. The Act was intended to "prevent cruelty to animals in transit." S. Pac. Transp. Co. v. Comm'r, 75 T.C. 497, 648 (T.C. 1980); Baltimore & Ohio Sw. R.R. v. United States, 220 U.S. 94 (1911). The Act was initially passed in 1872, revised in 1906 and recodified in 1994. It is clear that Congress intended the Act, in its original form, to provide humane standards for the treatment of animals in transit. The Act was initially so stringent that its enforcement quickly subsided, leading Congress to pass the revised 1906 statute, which provided a thirty-six hour window for transit where owners and carriers agreed to by contract. Law of June 29, 1906, § 3413. The 1872 statute "had been in force for about 30 years without accomplishing anything except its own discredit by reason of its too drastic provisions." United States v. Atchison Topeka & Santa Fe R.R. Co., 166 F. 160, 161 (D. Ill. 1908). That Congress revised the law more than once supports the inference that the intent was for this law to effectively control the treatment of animals in interstate commerce. This law was enacted as part of the broader scheme of transportation regulation. When the Twenty-Eight Hour Law was recodified in 1994 it was under Title 49 of the U.S. Code, pertaining generally to transportation. Pub. L. No. 103-272, 108 Stat. 931 (1994). As with the federal alien registration law at issue in Hines, the Twenty-Eight Hour Law is part of a "harmonious whole" statutory scheme. Hines, 312 U.S. at 72. The intent of Congress to regulate the whole of interstate transportation, including setting standards for the humane treatment of animals in transit, precludes the enforcement of Floridina's Cruelty to Animals Law.

For the foregoing reasons, this Court should reverse in part the decision of the lower court and find that the Twenty-Eight Hour Law must preempt the enforcement of the Floridina Cruelty to Animals Act.

CONCLUSION

Appellant respectfully requests that this Court affirm in part and reverse in part the decision of the Stinsonia District Court, and find that (1) chickens are "animals" under the Twenty-Eight Hour Law, and (2) the Twenty-Eight Hour Law preempts enforcement of Floridina's Cruelty to Animals Law. Appellant's conviction should be reversed and the indictment against him dismissed.

Respectfully Submitted,

/s/ Team 14
Team 14
Counsel for Appellant
Jeffrey Williams

APPENDIX

Appendix A

8 FRS § 621, in relevant part:

"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.

Appendix B

49 U.S.C. § 80502

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.