IN THE STATE OF FLORIDINA,
DISTRICT OF STINSONIA

THE PEOPLE OF THE STATE OF FLORIDINA,

Plaintiff - Appellee,

Cr. No. 08-1028

v.

JEFFREY WILLIAMS,

DEFENDANT - APPELLATE BRIEF

Defendant - Appellant.

Submitted By:
Team 9,

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STATEMENT OF JURISDICTION

The State's appeal is specifically authorized by Rule 1028 of the Floridina Rules of Criminal Procedure. This Court has jurisdiction under Floridina's Cruelty to Animals Law, 8 Floridina Revised Statutes section 621, which was allegedly violated by the Defendant in this matter.

STATEMENT OF THE STANDARD OF REVIEW

When dealing with the application of a particular state law to the facts of a case, the 2nd circuit court applies a de novo standard of review. *U.S. v. Pope*, 146 Fed.Appx. 536, 540 (Vt.2005).

STATEMENT OF QUESTIONS INVOLVED

1. Does the term “animals” in the Twenty-Eight Hour Law include chickens?

   Trial Court Answer: Affirmative

   Proposed Answer: Negative

2. 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?

   Trial Court Answer: Negative

   Proposed Answer: Affirmative

STATEMENT OF THE CASE

A. Procedural History

This Appeal arises from the decision of the United States District Court for the District of Stinsonia of the State of Floridina, dated November 19, 2008. (B.O. 1).

The State of Floridina indicted Jeffery Williams in the District Court of Floridina for multiple violations of Floridina's Cruelty to Animals Law, 8 Floridina Revised Statutes section 621, based on the treatment of roughly 10,000 chickens found in a truck that Williams was driving through Floridina. (B.O. 1).

Williams does not deny the facts of the charging document that he had committed all the acts constituting the forty-five counts of animal cruelty. (B.O. 1). Williams raised a sole legal defense, arguing the state's right to bring this action because the state anti-cruelty law was preempted by 49 U.S.C. section 80502, the Twenty-Eight Hour Law. (B.O. 1). The District Court found that Williams' conduct was subject to the Twenty-Eight Hour Law, but that the federal law did not preempt the state prosecution. (B.O. 1). Williams was convicted on all forty-five counts. (B.O. 1).

Williams appealed the District Court's decision, arguing that he was subject to the Twenty-Eight Hour Law and that his conviction should be overturned and his indictment dismissed because the application of the state anti-cruelty law violate the Supremacy Clause of the United States Constitution on the grounds of federal preemption. (B.O. 1-2).

The State has entered a cross-appeal of the District Court's ruling that the transport of the chickens was covered by the Twenty-Eight Hour Law. (B.O. 2). The

State's appeal is specifically authorized by Rule 1028 of the Floridina Rules of Criminal Procedure. (B.O. 2).

B. Statement of Facts

Jeffrey Williams is the owner of a company called Truckin Chicken which transports live birds in large tractor trailer trucks. (R. 1). Majority of the birds Truckin Chicken transports are "spent hens," called so because they can no longer lay eggs and have no obvious market value. (R. 1). A national problem has arisen for egg producers over the disposal of such hens which can total tens of thousands of the animals each month. (R. 1). Environmental and human health dangers evolve from the disposal of such chickens in dumpsters. (R. 1). Williams, aware of this problem, seized the opportunity for a business to collect the spent hens along the East Coast and sell them to the United States Department of Agriculture ("USDA"). (R. 1). The USDA uses these chickens in school lunch programs. (R. 1).

Williams and the farmers fashioned a deal where the farmers do not pay Williams for the removal of such chickens, and Williams does not pay the farmers for the spent hens. (R. 2). Each run packs approximately ten thousand chickens and goes across at least two states. (R. 2). All of the drives are less than twenty-four hours. (R. 2). During transit, the chickens receive no food, ventilation, or veterinary care and upon arrival, approximately fifteen percent are usually dead. (R. 2).

Williams was stopped during one of his trips in 2008 in Floridina on his way to New York because one of his taillights was out. (R. 2). A Floridina Highway Patrol Officer found a number of dead chickens, live chickens standing on top of dead ones, and some that appeared to be unable to stand upright. (R. 2). Upon consulting an animal

control officer, who confirmed the reported conditions were a violation of state law, the officer arrested Williams for cruelty to animals in violation of Floridina's Cruelty to Animals Law, 8 Floridina Revised Statutes ("FRS") section 621, subsections (a)-(d). (R. 2).

SUMMARY OF THE ARGUMENT

There are two issues to address when answering the question of whether the term "animals" in the Twenty-Eight Hour Law includes chickens. First, are chickens biologically animals? It is true that the word "chicken" is not named specifically in the statute, but the word "animals" is used and this is sufficiently comprehensive to embrace chickens. This is because "unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co. v. Burton,* 549 U.S. 84 (2006). Other jurisdictions have concluded that animals such as horses and gamecocks are to be included in the term "animals" although not specifically defined. The federal court in *Chesapeake & O. Ry. Co. v. Amer. Exch. Bank,* concluded such laws to address "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. v. Amer. Exch. Bank*, 23 S.E. 935, 937 (1896). Just like the Court held horses fell under this stipulation, so would the chickens Truckin Chickens transported. Many jurisdictions have defined the term "animal" in broad and general terms. Under such rationale, chickens would be included as "animals" such as gamecocks were in *State v. Buford,* 65 N.M. 51, (1958). Though the District Court originally thought there were consistencies in determining if a chicken is to fall under the classification of "animal", ultimately, it found that chickens are animals under the Twenty-Eight Hour Law.

The second aspect of this analysis is to determine whether this finding that chickens are animals is consistent with the statutory scheme of the Twenty-Eight Hour Law. The statute's main purpose is to protect against the cruelty and injury of any animal being shipped long distances. Chickens that are being transported fall within the meaning

of animals under the statute. The chickens in the case at hand are primarily what the statute was aimed to protect. The Twenty-Eight Hour Law is a humanitarian regulation, with the intention to protect the cargo being shipped, not defining a specific type of animal.

In addition to the determination of whether "animals" include chickens, the issue of federal preemption is involved in the case. A state law may be federally preempted in four distinct manners: (1) express preemption, (2) conflict preemption, (3) field preemption, or (4) obstacle preemption. At issue in this case is whether or not field and/or obstacle preemption exists, thus invalidating the Floridina Cruelty to Animals Law, 8 FRS section 621 due to the federal Twenty-Eight Hour Law?

Field preemption occurs in the present circumstances because Congress clearly intended the Twenty-Eight Hour law to occupy the issue of transportation of livestock. In looking at the Congressional aim of enacting the Twenty-Eight Hour law, it is evident that Congress intended to provide uniform standards for the transportation of livestock and did not intend for states to supplement this legislation. The Court's opinion in *Southern Pacific Co*., 208 Cal.App. 2d 745 (1962) dealt with an earlier version of the federal legislation that is the subject matter of this appeal. The *Southern Pacific Co.,* Court concluded that Congress intended to provide uniform standards and regulations to guide the transportation of livestock. Additionally, field preemption has been found in many other areas of federal law which deal with subject matters requiring expertise in drafting regulations. Typically Congress will yield to an agency's expertise and authority in certain fields to determine appropriate standards and legislation.

Furthermore, the state animal cruelty law is also invalid based on obstacle preemption. In requiring far more restrictive measures, the state law creates barriers which hinder and frustrate the Congressional purpose behind the Twenty-Eight Hour law. The Floridina statute clearly negates and strains the Congressional intent of providing uniform standards for individuals who transport animals throughout the country. Congress created the Twenty-Eight Hour law for the purpose of providing set standards for individuals to follow. In enacting the state cruelty to animal legislation, Floridina creates an obstacle to the realization of those Congressional goals.

As such, the charges against Defendant Williams should be dismissed and the Floridina statute declared void as preempted by the federal Twenty-Eight Hour law.

ARGUMENT

I. Chickens Are Included in the Group of "Animals" Covered By the Twenty-Eight Hour Law.

A. Chickens Are Biologically Animals

The analysis of this issue is straightforward because "unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning." *BP Am. Prod. Co.* 549 U.S. at 127. Because the statute does not apply specifically to chickens, but lists animals only, the statute was intended to protect the American people from consuming diseased animal food; and that the Twenty-Eight Hour Law is restricted to animals used for that purpose. It is true that the word "chicken" is not named specifically in the statute, but the word "animals" is used and this is sufficiently comprehensive to embrace chickens.

When interpreting if horses fell under Section 4386 of the Revised Statutes of the United States, which forbids any railroad company which carries "cattle, sheep, swine, or other animals" from keeping the same confined in its cars for a longer period than twenty-eight consecutive hours, without unloading the same for rest, water, and feeding, for a period of at least five consecutive hours, the Virginia Supreme Court ruled this is a humane rather than a sanitary regulation, intended to prevent cruelty and injury to animals shipped long distances, and embraces horses, mules, and all animals which may suffer for want of food, water, or rest during such transportation. *Chesapeake & O.Ry. Co.,* 23 S.E. at 937. The Court determined the object of the statute was to prevent cruelty and injury to animals that were shipped long distances, by requiring that they should be unloaded, watered, fed and allowed to rest at stated intervals. It is a humane rather than a

sanitary regulation. *Id*. The Twenty-Eight Hour Law, 49 U.S.C. § 80502, is practically identical to the statue in *Chesapeake*, with the only difference in naming the transportation of just "animals" rather than "cattle, sheep, swine, or other animals" as in Section 4386 of the Revised Statutes of the United States. As the Supreme Court of Virginia held in *Chesapeake*, the Twenty-Eight Hour law is a humane rather than a sanitary regulation. The Court determined "it is clear that all animals which would suffer in like manner with cattle, sheep, and swine for want of food, water, or rest, while being shipped long distances are within its provisions." *Id*. Under this interpretation of an almost identical statute, chickens would be included in the group of "animals" covered by the Twenty-Eight Hour Law.

The Supreme Court of New Mexico looked to other jurisdictions for the definition of "animal" in determining if gamecocks came within the terms of New Mexico's Cruelty to Animals Statute, § 40-4-3, N.M.S.A.1953, of "any animal." *Buford*, 65 N.M. at 52. Under numerous jurisdictions, the term 'animal' has been defined to include 'every living creature except men,' or 'the human race,' or 'human beings;' 'every living dumb creature;' 'the whole brute creation,' or 'any domestic animal.' *See* § 828.02, Fla.Stats.1953, F.S.A.; Art. 27, § 62, Md.Code Ann., 1957; § 614.47, Minn.Stats.1957; § 574.050, Nev.Rev.Stats.1943; § 4:22-15, N.J.Rev.Stats.1937, N.J.S.A.; § 4-1-3, R.I.Gen.Laws 1956; § 40.2201, S.Dak.Code 1939; § 18-108, Va.Code 1950; § 8358, Vt.Stats.Rev.1947; *see also Budge v. Parsons*, 1863, 3 B. & S. 382; *Bates v. M'Cormick*, 1863, 9 L.T. 175, cited in 2 English and Empire Digest 399. In view of these definitions, the Court held that gamecocks fell within the definition of "any animal." *Buford*, 65 N.M. at 52. According to the dictionary, a gamecock is a rooster of the domestic chicken

trained for fighting. Merriam-Webster Online Dictionary 3 January 2009 http://www.merriam-webster.com/dictionary/gamecock (2009). Under the Supreme Court of New Mexico, since a gamecock, which is the rooster of the domestic chicken, is considered an animal, then a chicken would also fall under the definition of "any animal."

The District Court found the cases and codes to be inconsistent, with some courts drawing the conclusion that chickens are thought to be birds, with avian characteristics, in contrast to beasts of the field, referring to the ruling in *State of Kansas v. Claiborne*, 505 P.2d 732, 735 (Kan.1973). The issue in *State of Kansas v. Claiborne* is not aimed at determining if a specific animal should be protected by an animal cruelty statute as is the issue with the case at hand, but rather if a long standing and established sport violates the state's animal cruelty statute. The Court states the issue to be, whether cockfighting falls within the prohibition of K.S.A.1972 Supp. 21-4310 as constituting cruelty to animals? *State of Kansas*, 505 P.2d at 733. The Court does not focus on the specific animal of the chicken, but instead analyzes the history of cockfighting. In the State of Kansas, cockfighting is still a well established sport. In the Court's analysis, the ruling of the case fell upon the question of the legality of cockfighting in relation to gambling, not if gamecocks were meant to be deemed animals and protected under the Kansas Animal Cruelty Statute. The Court stated, "[W]e have already pointed out, Kansas prohibited cockfighting only on Sunday, from which an inference may reasonably be drawn that cockfighting was legal on the other six days of the week." *Id*. Moreover, when the Sunday statute was repealed, no statute took its place prohibiting in any way, or at any time, such activities as cockfighting, card playing, or horse racing. From such omission the rationale would be that cockfights might be held seven days a week. *Id*. at 735. Even

though the court debated about the sport of cockfighting, it did continue on to say, "we must recognize that biologically speaking a fowl is an animal; a sentient, animate creature as distinguished from a plant or an inanimate object." *Id.*

The State makes the argument that the chickens must be excluded from the Twenty-Eight Hour Law because the prior language of the law read, "cattle, sheep, swine, or other animals," showing the drafters of the law intended only to include four-footed animals and not fowl. This argument shows exactly the opposite; that the drafters meant to include all animals, including chickens, by removing the distinction of specific animals such as "cattle, "sheep," "swine," and the ambiguous and broad term of "other animals", to just read animals. Another point of contention for the Court is the absence of any comment on the part of the USDA of this issue. The one single point of confirmation and soundness is that trucking operations clearly fall under the Twenty-Eight Hour Law. All of this suggests to the Court that chicken transport must be covered by the Twenty-Eight Hour Law. Ultimately, the District Court held that the language of the Twenty-Eight Hour Law and deference to rules of statutory construction tip the balance in favor of a finding that chicken animals.

B. Chickens Are Animals Under The Twenty-Eight Hour Law Because This Is Consistent With The Statutory Scheme

While this Court has stated chickens may be biologically animals, the concern is whether or not they are necessarily animals under the statute because this construction may not be "consistent with the statutory scheme." *Molski v. M.J. Cable, Inc.*, 481 F. 3d 724 (9th Cir.2007). As established above, the statutory scheme of the Twenty-Hour Law is the same as Section 4386 of the Revised Statutes of the United States, the statute in *Chesapeake.* As the Court held, the intention of the statute is to prevent cruelty and

injury to animals being shipped long distances, and which may suffer for want of food, water, or rest during transportation. *Chesapeake,* 23 S.E. at 937. The statute's main purpose is to protect against the cruelty and injury of any animal being shipped long distances. Chickens that are being transported fall within the meaning of animals under the statute. The chickens in the case at hand are primarily what the statute was aimed to protect.

Other cases address the statutory scheme of such animal cruelty statutes to be concerned with humanitarianism, encompassing a broad range of the term "animal." This issue is not one for the precise definition of an animal, but rather is concerned with the moral and civilized affects. These statutes are "directed against acts which may be thought to have a tendency to dull humanitarian feelings and to corrupt the morals of those who observe or have knowledge of those acts." *Commonwealth v. Higgins,* 178 N.E. 536 (1931). In *Commonwealth v. Turner*, 14 N.E. 130 (1887), after construing "the offense "to be "against the public morals, which the commission of cruel and barbarous acts tends to corrupt", the court applied the statute to a defendant who let loose a fox to be hunted by dogs even though a fox was a "noxious animal" which could lawfully be killed by hunting with dogs. *Turner*, 14 N.E. at 132. In the course of its opinion, the court noted, "The word 'animal' in its common acceptation, includes all irrational beings." *Id*. Again, the Court looked at this as a humanitarian regulation. When this is the purpose of the law, emphasis fades from precise specimen that falls under the term "animal," and focuses on the statutes effect and what it stands to protect.

II. The Supremacy Clause of the United States Constitution bars Williams ' convictions under the Floridina Cruelty to Animals Law, 8 FRS section 621, by federal preemption of the state law by the federal Twenty-Eight Hour Law.

In addition to finding that the term "animals" in the Twenty-Eight Hour law includes chickens, the Court should ultimately dismiss the claims against Defendant Williams on the grounds that the federal Twenty-Eight Hour law preempts the state law. Due to the federal preemption, the state law must be declared invalid as directed by the Supremacy Clause of the United States Constitution.

The Supremacy Clause of the United States constitution is found in Article VI, Clause 2, and it declares, "[S]tate laws that interfere with, or are contrary to the laws of congress, made in pursuance of the constitution are invalid." *Aux Sable Liquid Products v. Murphy*, 526 F.3d 1028, 1045 (7th cir. 2008). In determining whether a federal law has successfully preempted a state law, the court must establish the intent of Congress. *Hendricks County Board of Zoning Appeals v. Barlow*, 656 N.E.2d 481, 483 (Ind.1995).

Preemption can be achieved in several different ways including express, field, conflict, and obstacle preemption. *Murphy*, 526 F.3d at 1033. When a federal statute unambiguously affirms that it overrides state or local law, expressed preemption exists. *Id*. Field preemption is found when a federal law so meticulously 'occupies a legislative field' that it becomes reasonable to presume that Congress did not intend for states to legislate in such a field. *Id*. Conflict preemption occurs when it is impossible for a defendant to comply with both the state and federal statutes simultaneously, and thus the state law becomes void. *Id*. Similarly, obstacle preemption occurs when the state or local law is an obstacle or barrier to the achievement and implementation of the legislative purposes and objectives of Congress, as carried out by the federal statute. *Id*.

Here, the District Court was correct in ruling that no express or conflict preemption exists. However, field and obstacle preemption are present under these facts and cannot be dismissed as easily.

A. Due to the Comprehensive and Pervasive Nature of the Federal Twenty-Eight Hour Law, it is Clear that Field Preemption Applies Because Congress Intended to Occupy the Entire Area with this Legislation.

Field preemption is typically found when Congress's enactment of legislation is comprehensive and all encompassing. *Wisconsin Cent., Ltd. v. Shannon*, 539 F.3d 751 (Crt.App.Ill.2008). In *Wisconsin Cent., Ltd.*, the Court held that a state railway over time pay law was preempted by the Railway Labor Act because the Railway Labor Act was implemented in order to provide a "framework for resolving labor disputes." *Wisconsin Cent., Ltd.*, 539 F.3d at 757. In order to realize its goals, Congress passed the Railway Labor Act to quickly and efficiently resolve any and all labor pay disputes. *Id*. In determining whether to apply field preemption in *Wisconsin Cent., Ltd.*, the Court looked to the longstanding history of federal regulation of the railroad industry. *Id*. at 762.

Likewise, field preemption has been found in the area of anti-biotic treated animal feed. *Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corp.*, 626 F.Supp.278 (D.Mass.1986). In this case, the applicable federal law, promulgated under the Federal Meat Inspection Act, did not require meat and meat food product labels to display a warning about the "subtheraputic use of antibiotics." *ALDF*, 626 F.Supp at 285. The ALDF brought suit because of the concern about calves consuming feed containing anti-biotic drugs, believed to help promote growth. *Id*. at 281. ALDF claimed that using the anti-biotic feed for calves violated both state and federal law. *Id*.

Ultimately the Court held that ALDF's claims were barred by field preemption due to a comprehensive "federal scheme regulating the labeling, packaging and marketing of meat and the usage of medicated animal feed." *Id*. This comprehensive scheme of federal regulations promotes the "health and welfare of consumers," and equally as important, prevents and reduces burdens on interstate commerce for the meatpacking industry. *Id*. at 282.

Moreover, it has been held that agency decisions found in various federal statutes typically involves discretionary decisions that should be made only by experts. *Holk v. Snapple Beverage Corp.*, 574 F.Supp.2d 447 (D.N.J.2008). In *Holk*, the Federal Food, Drug and Cosmetic Act gave the Federal Food and Drug Administration (FDA) the authority to regulate bottle labeling and other product marketing. The plaintiff brought suit based upon Snapple's assertion that the product was "All Natural," when in fact the product contained high fructose corn syrup. *Holk*, 574 F.Supp.2d at 449. The Court found that it was clearly within the discretionary powers of the FDA to determine what language to use when labeling and marketing the Snapple's products. *Id.* at 455. Finding that any additional state law requirements would only serve as an obstacle to the duty of the FDA, the Court held that field preemption applied to the plaintiff's claims. *Id*.

The most influential and relevant case is *People v. Southern Pacific Co*., 208 Cal.App.2d 745 (1962). Despite the District Court's opinion that this case presents different facts than the present case, it deals directly with the predecessor to the Twenty-Eight Hour law. The Court in *Southern Pacific Co* held that the federal law presented 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." *Southern Pacific Co.*, 208 Cal.App.2d at 752. There is no more direct and clear statement illustrating field preemption than the opinion in *Southern Pacific Co*. Regardless of the facts of *Southern Pacific Co*., the question of federal preemption remains the same and is consistent with the issue in the present case.

All of these cases present similar facts and circumstances to the present case. The federal Twenty-Eight Hour Law explicitly governs the transportation of animals across state lines. The Twenty-Eight Hour Law permits the transportation of animals for up to twenty-eight hours without the requirement of unloading, feeding, watering, or providing rest for the animals. In setting this specific time limitation, Congress has clearly stated that is it humane to transport animals for any amount of time less than twenty-eight hours. Due to the specificity and the exactness of the federal statute, it can be argued that the statute was enacted with expertise and authority in determination of what is to be deemed cruel treatment of animals.

Additionally, this piece of federal legislation is comprehensive and does not provide any provisions that permit the state to supplement the legislation. Furthermore, subsection (b) of the federal Twenty-Eight Hour Law provides requirements for transportation that will take more than twenty-eight hours. It is after that time period when Congress thought animals would require food, water and at least five hours of rest. The District Court felt that field preemption would "eliminate state regulation of animal cruelty," however, this is not the case. The state would continue to have the ability to regulate all other areas dealing with animal cruelty throughout the state. It is only the

area of the transportation of animals in which Congress intended to occupy as a federal matter.

Finally, a legislative history must be examined in order to determine whether there has been a federal scheme of legislation in this field. Although, as the district court points out, animal cruelty legislation has sometimes been considered an area of state law, this does not preclude the possibility that in this particular area, namely the transportation of livestock into interstate commerce, federal law is more pervasive and controlling than other animal cruelty laws. An analysis of federal legislation in this particular area is required to rule out the possibility of field preemption. Until a thorough review of federal legislation concerning the transportation of livestock across state lines is complete, it cannot be determined that field preemption does not exist.

Quite simply, due to the national involvement of the transportation of livestock across state lines, it is more likely than not that Congress intended to occupy the entire field in this area. This particular federal legislation does not affect other forms of animal cruelty which only occur in state. The Twenty-Eight Hour Law exclusively deals with transportation of animals and clearly focuses in on livestock, as evidenced by the word "pens," found in subsection (b). Importantly, it is imperative that the livestock be easily and efficiently transported across state lines in order to ensure an adequate supply of food for school lunches. In enacting the Twenty-Eight Hour Law, Congress's intention was to provide standards and guidelines for this transportation. Because this situation often deals with transportation over state lines, it takes on a national character. Thus, Congress's intention and purpose of providing standards for such transportation would be

frustrated if each and every state were permitted to implement separate and different regulations for this same goal.

Therefore, the Court must reject the trial court's ruling that field preemption did not exist. A closer and more in-depth analysis must be given to the statutory history and scheme regarding the transportation of livestock. In doing so, it will be proven that Congress did indeed intend to occupy this field of animal law in order to carry out its goals of effective, efficient and economic transportation of livestock throughout the country.

B. The Flordina Anti-Cruelty State Statute is Invalid Under the Supremacy Clause Because it Presents an Obstacle to the Intent and Purpose of the Federal Twenty-Eight Hour Law.

Even if the Court declines to find the presence of field preemption, the Floridina anti-cruelty statute is void under obstacle preemption as well. When a state law serves as an obstacle to a federal law, an examination of the federal statute to determine Congressional purpose and intent is necessary; this examination includes an analysis of the relationship between the state and federal law, not merely a consideration of the written statutes alone. *Murphy*, 526 F.3d at 1034. If it is determined that the federal intent is frustrated by the state law, obstacle preemption is present and the state law becomes invalid. *Id*. Under obstacle preemption, the federal law does not completely occupy any particular field of law; however, the state law simply impedes the workings of the federal law. *Management Association for Private Photogrammetric Surveyors v. United States*, 467 F.Supp.2d 596, 604 (E.D.Va.1996).

Under the theory of obstacle preemption, courts typically begin with a detailed and comprehensive analysis of the regulatory and rule making history of a federal law.

Before forming any conclusions, the courts typically review the relevant federal statute in order to make a determination regarding its history.

Courts have found obstacle preemption in a wide variety of circumstances. For example, the United States Court of Appeals for the Second Circuit held invalid state laws which placed regional restrictions upon allowance trading under the Clean Air Act. *Clean Air Markets Group v. Pataki*, 338 F.3d 82, 85 (2nd Cir. 2003). The Court reasoned that the Congressional objective of implementing a national system for trading SO_2 allowances was hindered and frustrated by New York State's attempt to regionalize this trading system. *Pataki*, 338 F.3d at 85. Moreover, the Court opined that the Federal Clean Air Act did not allow one state to have the ability to control emissions in another state, even though this was not expressly stated. *Id*. The Court found that this practice implemented the Commerce Clause because it could not "fairly . . . viewed as a law directed to legitimate local concerns, with effects upon interstate commerce that are only incidental." *Id.* at 86. Accordingly, the Court opined that the burden placed on commerce by New York's attempt to place regional limits on SO_2 trading was "excessive in relation to the putative local benefits." *Id*.

Conflict or obstacle preemption was also found in *Aux Sable Liquid Products v. Murphy*, 526 F.3d 1028 (7th Cir.2008). The Court explained that an examination of the federal statute as a whole was necessary in order to identify its purpose and intended effects. *Aux Sable Liquid Products*, 526 F.3d at 1034. In order to do this analysis, the relationship between the applicable state and federal laws must be explored. *Id*. The key, as the Court explained, is whether the state law frustrates a Congressional objective. *Id.* The Court sided with the defendant and found preemption based on its determination that

Congress's primary goal in passing the Surface Transportation Assistance Act, which limits truck weights for transportation, was to create uniform standards for commercial motor vehicles. *Id.* at 1035. Finally, the Court reasoned that this goal of uniformity would be frustrated if state and local governments were able to bar the entrance of commercial motor vehicles rightly entering the local roads or interstate highways. *Id.* at 1036.

On the other hand, the Court in *Viva! International Voice for Animals v. Adidas Promotional Retail Operations, Inc.*, 41 Cal.4th 929,940 (Cal.4th 2007), found no preemption existed because the federal statute encouraged the States to help play a role in species preservation; in the instant matter, there is no such indication that states are to supplement the federal legislation. Moreover, the federal law's legislative history displayed a "joint cooperative state-federal approach to wildlife preservation." *Viva!*, 41 Cal.4th at 941. The federal legislation expressly stated that it should not preempt other effective legislation with regards to species protection. *Id.* Thus, the Court held that no preemption existed. The facts present in *Viva!* portray a situation where the Congressional intent was to have state and federal legislation work together simultaneously towards a common goal.

In the present situation, obstacle preemption is present between the state and federal laws. If compliance with both state and federal laws frustrates a larger goal or purpose of congress, obstacle preemption is present. *County of San Diego v. San Diego Norml*, 165 Cal.App.4th 798, 820 (2008). In this case, the applicable Cruelty to Animals Law, which speaks to the transportation of animals, among other types of "animal cruelty", is 8 FRS section 621. It states,

> "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."

However, the language of the federal Twenty-Eight Hour Law, which also governs the transportation of animals, only requires that animals may not be confined for more than 28 consecutive hours without being unloaded and provided food, water, and rest. The Twenty-Eight Hour Law also provides for the methods for unloading, feeding, and watering the animals, which only applies when the animals are being transported for more than 28 consecutive hours. Most importantly, according to the Twenty-Eight Hour Law, Congress has determined and expressed its intent that it is humane to transport animals for less than twenty-eight hours without providing them with food, water or rest. If Congress intended stricter requirements when transporting animals, the statute would reflect those intentions. Likewise, if Congress thought the states should supplement or provide stricter standards when transporting animals, it would have been reflected in the statute.

When applied to the facts, it becomes apparent that in order to follow the state statute, which requires far more restrictive care of the spend hens, the goal of transporting the hens to and from various locations becomes frustrated and strained. Because the Floridina state law requires much stricter rules and regulations than the federal law, the intent of Congress in enacting the federal law becomes obsolete, and the ultimate goal of transporting animals efficiently into commerce is hindered.

CONCLUSION

In conclusion, when answering the question of whether the term "animals" in the Twenty-Eight Hour Law includes chickens, it must be determined that a chicken is biologically an animal and that including chickens under the Twenty-Eight Hour Law is consistent with the statutory scheme. Through cases concluding other undefined animals have met such a definition of animals and through the language of the statute, we can conclude here that the District Court was correct in finding that chickens are animals under the Twenty-Eight Hour Law. The Twenty-Eight Hour Law is a regulation which promotes humane treatment of animals. The purpose of this statute is to make sure all animals that are transported which would suffer for want of food, water, or rest, are protected. The chickens being transported by Truckin Chickens are primarily the type of animal the statute sought to regulate. Since finding that chickens are biologically animals and their inclusion in the Twenty-Eight Hour Law is consistent with the statutory scheme, we can answer affirmatively that the term "animals" in the Twenty-Eight Hour Law includes chickens.

Also, under both field and obstacle federal preemption, and in accordance with the Supremacy Clause of the United State constitution, this Court should dismiss the charges against Defendant Williams. The Floridina state animal cruelty statute not only frustrates and hinders the goals of the federal Twenty-Eight Hour Law; it is also equally clear, as evidenced by the language provided in the statute, Congress intended to occupy the entire field of the transportation of livestock across state lines. By enacting legislation which clearly and effectively sets forth the necessary requirements for such

transportation, Congress left no room for supplemental state legislation, invalidating the Floridina state law.

CERTIFICATE OF SERVICE

We hereby certify that our brief is the product solely of the undersigned and that the undersigned have not received outside assistance of any kind in connection with the preparation of the brief.

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Team Member

Date: _____

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Team Member