

Cr. No. 08-1028

**STATE OF FLORIDINA
COURT OF APPEALS
DIVISION THREE**

THE PEOPLE
Respondent/Cross-Appellant,

v.

JEFFREY WILLIAMS,
Appellant/Cross-Respondent.

**Appeal from
State of Floridina
District of Stinsonia
Case No. 08-1028
The Honorable Judge
Matthew H. Pan**

**RESPONDENT/
CROSS-APPELLANT'S BRIEF**

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TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUES.....	1
STATEMENT OF THE FACTS.....	1
STANDARD OF REVIEW.....	2
ARGUMENT.....	2
I. THE DISTRICT COURT INCORRECTLY HELD THAT CHICKENS WERE ANIMALS WITHIN THE TWENTY-EIGHT HOUR LAW BECAUSE CHICKENS ARE POULTRY AND POULTRY ARE NOT ANIMALS.	2
A. <u>The legislative history of the Twenty-Eight Hour Law should be used to interpret meaning of “animal” because the plain language meaning of “animal” is ambiguous.</u>	3
B. <u>Excluding chickens from the definition of “animals” within the Twenty-Eight Hour Law is consistent with the definitions of “animal” and “chicken” in similar federal statutes.</u>	6
II. THE TWENTY-EIGHT HOUR LAW DOES NOT PRECLUDE WILLIAMS’ CONVICTION BECAUSE THE TWENTY-EIGHT HOUR LAW DOES NOT PREEMPT FLORIDINA’S CRUELTY TO ANIMALS LAW.	10
A. <u>Federal law elects not to dominate the field of poultry regulation because state and federal governments have concurrent authority.</u>	11
B. <u>Obstacle preemption does not apply to Floridina Cruelty to Animals Law because it does not frustrate the purpose or intended effect of the Twenty-Eight Hour Law.</u>	16
CONCLUSION	20

TABLE OF AUTHORITIES

Cases

<u>Animal Legal Defense Fund, Inc. v. Espy</u> , 23 F.3d 496, 498 (D.C. Cir. 1994).	8, 14
<u>Aron v. Pennsylvania R. Co.</u> , 80 F.2d 100, 101 (2nd Cir. 1935).	5
<u>Bates v. DOW Agrosiences LLC.</u> , 544 U.S. 431 (2005).	16, 17
<u>Boise Cascade Corporation v. United States Environmental Protection Agency</u> , 942 F.2d 1427, 1432 (9th Cir. 1991).	9
<u>Canton v. Conner</u> , 278 F.Supp. 822 (N.D. Fl 1968).	11, 12, 13
<u>Cebe Farms, Ind. V. United States</u> , 83 Fed. Cl. 491 (Fed. Cl. 2008).	9
<u>Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.</u> , 467 U.S. 837 (1984). ..	3
<u>Cipollone v. Liggett Group, Inc.</u> , 505 U.S. 504 (1992).	10
<u>Crosby v. Natl. For. Trade Council</u> , 530 U.S. 363 (2000).	16, 17, 18
<u>English v. General Electric Company</u> , 496 U.S. 72 (1990).	10
<u>Florida Lime and Avocado Growers, Inc. v. Paul</u> , 374 U.S. 132 (1963).	11
<u>Hillsborough v. Automated Medical Laboratories</u> , 471 U.S. 707 (1985).	10
<u>Holly Farms v. National Labor Relations Board</u> , 517 U.S. 392, 398 (1996).	5
<u>Kerr v. Kimmel</u> , 740 F. Supp. 1525, 1529 (D. Kan, 1990).	10
<u>Levine v. Conner</u> , 540 F.Supp.2d 1113, (N.D. Cal. 2008).	<i>passim</i>
<u>McBoyle v. United States</u> , 283 U.S. 25, 51 (1931).	5
<u>Medtronic, Inc v. Lohr</u> , 518 U.S. 470, 485 (1996).	10, 11
<u>Northwestern Selecta, Inc. v. Munoz</u> , 106 F.Supp.2d 223 (D.P.R. 2000).	11
<u>People v. Southern Pacific Company</u> , 208 Cal. App. 2d 745 (Ca. App. 5 Dist. 1962).	14, 15
<u>Robinson v. Shell</u> , 519 U.S. 337 (1997).	6
<u>Southern Pac. Co. v. H. Moffat Co.</u> , 154 F.2d 877 (9th Cir. 1946).	4

<u>Sprietsma v. Mercury Marine</u> , 537 U.S. 51 (2002).	10, 11
<u>State v. Claiborne</u> , 505 P.2d 732, 735 (Kan. 1973).	5
<u>Swift & Co. v. Wickman</u>, 230 F.Supp. 398 (S.D.N.Y.1964)	13
<u>U.S. v. Boston & M.R.R.</u> , 117 F.2d 424, 425 (1st Cir. 1941).	4
<u>U.S. v. Illinois Cent. R. Co.</u> , 303 U.S. 239 (1938).	12, 16
<u>U.S. v. Lehigh Valley R. Co.</u> , 184 F. 971 (W.D. NY 1911).	12, 16
<u>U.S. v. Powell</u> , 65 F.2d 793 (Cir. 4 1933).	5, 11
<u>United States v. TRW Rifle</u> , 447 F.3d 686, 689 (9th Cir. 2006).	3

CONSTITUTIONAL PROVISIONS

U.S. Const., Art. VI, cl. 2	10
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Statutes

8 FRS § 621	<i>passim</i>
7 U.S.C. §§ 1901-1907 (2008)	6, 8
7 U.S.C. §§ 2132-2159 (2008)	6, 7, 8
7 U.S.C. §§ 8301-8322 (2008)	8, 9
21 U.S.C. §§ 451-472 (2008)	<i>passim</i>
21 U.S.C. §§ 601-625 (2008)	6,7
45 U.S.C. §§ 71-41 (repealed 1994)	4
49 U.S.C. § 80502	<i>passim</i>

Miscellaneous

9 C.F.R. § 71.5 (2008)	18
9 C.F.R. § 89.1 (2006)	4, 5
9 C.F.R. § 151.1 (2008)	5

9 C.F.R. § 381.1 (2008)	6, 7
<u>Black’s Law Dictionary</u> 236 (Bryan A. Garner ed., 3rd pocket ed., West 2006).	5
David J. Wolfson, <i>Beyond the Law: Agribusiness and the Systemic Abuse of Animals Raised for Food or Food Production</i> , 2 Animal L. 123, 126 (1996).	13
Friedman Barry, <i>Valuing Federalism</i> , 82 Minn. L. Rev. 317, 345 (1997).	15
National Chicken Council, <i>National Chicken Council Animal Welfare Guidelines and Audit Checklist</i> , http://www.nationalchickencouncil.com/aboutindustry/detail.cfm?id=19 (Last accessed Jan. 5, 2008).	18
Rpt. Cong. Req. GAO-04-247 at 1-6 (Jan 2004).	12
“Treatment of Live Poultry Before Slaughter.” 70 Fed. Reg. 56,624 (Sept 28, 2005). ...	14

STATEMENT OF THE ISSUES

I. Under the Twenty-Eight Hour Law, does the term “animals” within the statute include chickens when no express definition of chickens or animals is provided?

II. Under the Supremacy Clause of the United States Constitution, does the Twenty-Eight Hour Law preempt Floridina’s Cruelty to Animals Law and preclude state prosecution for cruelty to animals?

STATEMENT THE FACTS

Jeffrey Williams (“Williams”) is the owner of Truckin Chicken, a company that transports chickens in large tractor-trailer trucks. (R. 1). Williams transports chickens that can no longer produce eggs to the United States Department of Agriculture (“USDA”), for use as food in school lunch programs. (R. 1). Williams obtains chickens from farmers for free because it allows the farmers to avoid the cost of disposal and eliminates potential fines for placing chickens in dumpsters to die. (R. 2). Williams packs roughly ten thousand chickens tightly into a tractor-trailer truck for transport that always traverses at least two states. None of his trips takes more than twenty-four hours and he never stops between his starting point and destination. Williams does not provide food, water, ventilation, or veterinary care during transit, which results in roughly fifteen percent of chickens dying during transit. (R. 2).

Williams was stopped by a Floridina Highway Patrol Officer because one of his taillights was out. (R. 2). The highway patrol officer found a large number of dead chickens, live chickens standing on top of dead chickens, and chickens that appeared unable to stand. (R. 2). Williams was arrested for cruelty to animals in violation of 8 FRS 621, which includes birds as animals under its protection. (R. 3). Williams was charged with forty-five counts of cruelty to animals. (R. 2).

STANDARD OF REVIEW

In this Court, the standard of review is de novo. Salute v. Stratford Greens Garden Apartments, 136 F.3d 293, 297 (2nd Cir. 1998).

ARGUMENT

I. THE DISTRICT COURT INCORRECTLY HELD THAT CHICKENS WERE ANIMALS WITHIN THE TWENTY-EGHOUR LAW BECAUSE CHICKENS ARE POULTRY AND POULTRY ARE NOT ANIMALS.

Chickens are birds treated as poultry and are excluded from the Twenty-Eight Hour Law. In 1957, Congress enacted the Poultry Products Inspection Acts (“PPIA”) in order to protect and assure that poultry and poultry products – a significant source of the Nation’s food supply – were processed and distributed in a safe manner. 21 U.S.C. § 451-472 (2008). The PPIA provides in pertinent part that:

[A]ll articles and poultry which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce, and that the regulation by the Secretary of Agriculture and cooperation by the states . . . are appropriate to prevent and eliminate burdens upon such commerce, to effectively regulate such commerce, and to protect the health and welfare of consumers.

21 U.S.C. § 451 (2008). Poultry, as defined by the PPIA, means “any domesticated bird, whether live or dead.” 21 U.S.C. § 453(e) (2008).

The Twenty-Eight Hour Law regulates the transportation of animals “from a place in a State . . . through or to a place in another State” whereby a carrier “may not confine animals in a vehicle or vessel for more than twenty-eight consecutive hours without unloading the animals for feeding, water, and rest.” 49 U.S.C. § 80502 (2008).

In order to determine whether a statutory term is unambiguous, courts first look to the plain language meaning of the word. Levine v. Conner, 540 F.Supp.2d 1113, 1115 (N.D. Cal.

2008). Courts typically consult dictionaries to provide the ordinary meaning of a particular word within a statute. See United States v. TRW Rifle, 447 F.3d 686, 689 (9th Cir. 2006) (stating that courts are to “follow the common practice of consulting dictionary definitions to clarify the ordinary meaning and look to how the terms were defined at the time the statute was adopted”). If the plain language meaning is unambiguous, and Congress’ intent is clear, then the court’s inquiry ends. Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 843 (1984). Absent a plain language definition that resolves ambiguity, courts typically utilize other methods of construing the meaning of a term within a statute. See Generally Levine v. Conner, 540 F.Supp.2d 1113, 1115 (N.D. Cal. 2008).

The District Court gave deference to the plain language canon of construction without adequately considering two other canons of statutory interpretation: 1) the legislative history of the Twenty-Eight Hour Law, and 2) the use of the terms “animal” and “chicken” in similar federal statutes. The term chicken was excluded from the language of the Twenty-Eight Hour Law because Congress intended for poultry, which includes chickens and hens, to be distinct from animals, which includes livestock and other four-legged, fur-bearing creatures. Chickens are not animals, therefore, interstate transportation of spent hens is a practice that is not protected by the Twenty-Eight Hour Law.

A. The legislative history of the Twenty-Eight Hour Law should be used to interpret the meaning of “animal” because the plain language meaning of “animal” is ambiguous.

The District Court erred in adopting the plain language meaning of the term “animal” and including chickens in this definition because without consideration of the legislative history of the Twenty-Eight Hour Rule, the ordinary meaning of “animals” is ambiguous. The legislative history of a statute is an indication of the congressional intent at the time the statute was drafted.

Levine, 540 F.Supp.2d at 1120. Moreover, courts use the legislative history of a statute to understand the contextual meaning of a statutory term. Id.

The Twenty-Eight Hour Law, in its original form, was passed in 1906. 45 USCA §§71-74 (repealed 1994). The act provided in pertinent part that “cattle, sheep, swine, or other animals” could not be confined for more than twenty-eight hours in transit “without unloading the same in a humane manner, into properly equipped pens for rest, water, and feeding, for a period of at least five consecutive hours.” 45 USCA §§71-74. The Twenty-Eight Hour Law was amended and re-enacted in 1994. 49 U.S.C. § 80502 (2008). The amended legislation substituted the enumerated list of breeds protected by the act and replaced this list with the word “animals.” 49 U.S.C. § 80502.

Historically, the Twenty-Eight Hour Law has also been referred to as the Cruelty to Animals Act, the Live Stock Transportation Act, and the Food and Rest Act. See Southern Pac. Co. v. H. Moffat Co., 154 F.2d 877, 878 (9th Cir. 1946) (stating that the Live Stock Transportation Act is commonly known as the Twenty-Eight Hour Law and that the Live Stock Transportation Act requires that livestock transporters “make provision for the feeding, watering and resting of livestock in transit.”); U.S. v. Boston & M.R.R., 117 F.2d 424, 425 (1st Cir. 1941) (indicating that the Animal Cruelty Act and the Twenty-Eight Law have the same provisions). Livestock, as it pertains to the present Twenty-Eight Hour Law, includes cattle, horses, mules, sheep, goats, lambs, and swine. 9 C.F.R. § 89.1 (2008). This present-day meaning of livestock is consistent with the 1906 list enumerated in the original Twenty-Eight Hour Law.

Although the language of the pre-1994-amended Twenty-Eight Hour Law includes the words “and other animals,” this does not indicate that chickens are the “other animals” that Congress intended to include in the act. To determine the congressional intent, application of the

traditional statutory canon of construction, *ejusdem generis*, is appropriate. This canon provides that “when a word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same type as those listed.” Black’s Law Dictionary 236 (Bryan A. Garner ed., 3rd pocket ed., West 2006). (See e.g. McBoyle v. United States, 283 U.S. 25, 51 (1931). Courts have used the word “livestock” in cases that involved violations of the Twenty-Eight Hour Law. See Aron v. Pennsylvania R. Co., 80 F.2d 100, 101 (2nd Cir. 1935) (using the term “livestock” in reference to the Twenty-Eight Hour Law); U.S. v. Powell, 65 F.2d 793 (4th Cir. 1933) (indicating that horses are “other animals” within the Twenty-Eight Hour law). Cattle, sheep, swine, and horses are all breeds recognized by the USDA. 9 C.F.R. § 151.1 (2008). Moreover, cattle, sheep, horses, lambs, and swine are “livestock” within the Twenty-Eight Hour Law. 9 C.F.R. § 89.1 (2008). Poultry, however, is excluded from the USDA list of recognized breeds and the definition of livestock. Therefore, “other animals” refers to other livestock breeds and not poultry.

Courts have addressed both whether poultry are birds, and whether poultry is a term included in the meaning of animal. In State v. Claiborne, 505 P.2d 732, 735 (Kan. 1973), the Supreme Court of Kansas stated that “in common everyday experience of mankind chickens are seldom thought of as animals; rather they are birds . . . in contrast to beasts of the field.” The court further stated that “persons of common intelligence would consider a chicken a bird, not a hair-bearing animal.” Id. Similarly, in Holly Farms v. National Labor Relations Board, 517 U.S. 392, 398 (1996), the Supreme Court states that agriculture includes “the raising of livestock, . . . , or poultry.” Given that the court used the word “or” to separate the two terms, it can be inferred that this separation signifies a distinction in the meaning of the words. In Holly Farms, the court also stated that “broiler chickens are birds destined for human food markets.” Id. at 395. In

addition, the court acknowledged that the Holly Farm's poultry operation involved "birds called 'pullets,' young chickens destined to serve as laying hens." Id. Since the chickens in Holly Farms was used for human consumption, and the 10,000 spent hens that Williams transported were also destined for consumption, the hens Williams' transported are poultry.

Chickens are birds, birds are poultry, and therefore, chickens are poultry. The same logic follows for spent hens which are also poultry. Livestock shares common breeds with "animal" within the Twenty-Eight Hour Law. Therefore, substituting "livestock" for "animal" (within the meaning of the Twenty-Eight Hour Law) and "bird" for "poultry," it can be concluded that "animal" and "poultry" are distinct, non-interchangeable terms.

B. Excluding chickens from the definition of "animals" within the Twenty-Eight Hour Law in consistent with the definitions of "animal" and "chicken" in similar federal statutes.

When the ordinary meaning of a word within a statute is ambiguous, courts use alternative methods of statutory interpretation. See Generally Levine v. Conner, 540 F.Supp.2d 1113, 1115 (N.D. Cal. 2008). Courts can use the definition of a term as it appears in similar statutes in order to properly construe Congress' intent when the statute was drafted. See generally Robinson v. Shell, 519 U.S. 337 (1997). The PPIA, Federal Meat Inspection Act ("FMIA"), 21 U.S.C. §§ 601-625 (2008), Animal Welfare Act ("AWA"), 7 U.S.C. §§ 2132-2159 (2008), the Humane Methods of Slaughter Act ("HMSA"), 7 U.S.C. §§ 1901-1907 (2008), and the Twenty-Eight Hour Law, were all enacted by Congress in an effort to establish humane methods of treatment of living creatures (excluding humans), and to ensure that the health, safety, and well-being of the American population is not jeopardized. The USDA is the agency that regulates these similar acts. Therefore, the use of the terms animal(s), and poultry can be used to determine Congress' intended meaning of "animals" within the Twenty-Eight Hour Law.

The PPIA regulates the handling and distribution of poultry. 21 U.S.C. §451. The FMIA regulates the handling and distribution of meat and meat food products. 21 U.S.C. § 602. This act was passed in 1907, because Congress recognized that meat and meat food products were an important part of the Nation's food supply and that it was necessary to protect Americans from consuming contaminated or adulterated meat or meat products. 21 U.S.C. § 602. The PPIA and FMIA have similar policies and objectives as they both are concerned with ensuring that the food supply is safe. The distinction is that the PPIA regulates poultry and poultry products and the FMIA regulates the handling of the meat and meat products. "meat, meat products, and carcasses of cattle, sheep, swine, goats, horses, mules, and other equine". 21 U.S.C. § 601. The USDA defines poultry as "any domesticated bird (chickens, turkeys . . .) whether live or dead." 9 C.F.R. § 381.1 (2008).

The animals included in the FMIA are livestock, and are the same animals protected under the Twenty-Eight Hour Law. Congress intended to separately regulate the treatment of poultry and the treatment of livestock used for food consumption because both the PPIA and the FMIA were passed. If Congress intended to regulate poultry and livestock meat, and meat products under the same act, then the PPIA would not exist. However, because the PPIA is the sole federal legislation enacted to mandate safe poultry handling and distribution processes (including transportation), Congress intended for poultry and livestock to be exclusive. Therefore, poultry is not protected under the Twenty-Eight Hour Law.

The AWA was enacted in 1966, and provides in pertinent part that "animals and activities which are regulated under this chapter are either in interstate or foreign commerce . . . and that regulation of animals and activities provided in this chapter is necessary to eliminate burdens upon such commerce." 7 U.S.C. § 2131 (2008). The activities protected under this act

include the “transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes.” 7 U.S.C. § 2131 (2008). The definition of “animal” within the AWA expressly excludes birds, and poultry. 7 U.S.C. §2132 (2008). See Animal Legal Defense Fund, Inc. v. Espy, 23 F.3d 496, 498 (D.C. Cir. 1994) (indicating that within the AWA definition of animal, birds are not included). Similarly in the instant case, birds and poultry are not included in the language of the Twenty-Eight Hour Rule. Moreover, the “animals” listed in the original Twenty-Eight Hour Law also excluded birds and poultry.

The HMSA was passed in 1958. Congress enacted the HMSA to establish uniform practices of humanely slaughtering certain species. 7 U.S.C. §§1901-1907. The HMSA provides slaughtering methods for cattle, sheep, swine, horses, and other livestock. 7 U.S.C. § 1902. Poultry slaughtering methods, however, are not included in the HMSA. The omission of poultry from the language of the act is not accidental. The PPIA includes statutory requirements for poultry slaughtering and processing. 21 U.S.C. 458, 464. The creation of separate, and distinct laws to govern the slaughtering of animals and poultry, is further support that Congress intended for “animal” to be non-inclusive of “poultry.” See Levine v. Conner, 540 F.Supp.2d at 1121 (holding that “Congress intended to exclude poultry from the categorical word ‘livestock’”).

Although there is one animal welfare act that includes poultry within its definition of “animal,” this does not alter the definition of “animal” within the Twenty-Eight Hour law. The Animal Health Protection Act (“AHPA”) was enacted in 2002, to prevent the spread of diseases among the animals population, and to provide a means of compensation for owners whose animals were stricken and had to be destroyed. 7 U.S.C. §§ 8301-8322 (2008); See generally

Cebe Farms, Ind. V. United States, 83 Fed. Cl. 491 (Fed. Cl. 2008). Within this statute, the term “animal” means “any member of the animal kingdom (except a human),” which inherently includes chickens, poultry, and livestock. 7 U.S.C. § 8302. The AHPA is distinguishable from the PPIA, the AWA, the HMSA, and the Twenty-Eight Hour Law because the driving policy behind the AHPA is the eradication, and prevention of pests and diseases that adversely affect animals. Unlike the AHPA, the policy and purpose of the PPIA, AWA, HMSA, and Twenty-Eight Hour Law is the humane treatment of living creatures. Therefore, the definition of “animal” within the AHPA does not apply to “animal” within the Twenty-Eight Hour Law.

The enactment of multiple federal acts that regulate the humane treatment of living creatures (excluding humans) reinforces the notion that Congress has a strong interest in not only the protection of all members of the animal kingdom, but a strong interest in the health and safety of humans who handle and consume these species. Congress’ efforts have been long-standing – a demonstration of its commitment to adhering to its policies governing animal welfare acts. Moreover, the terms and definitions used in the animal welfare statutes have always been set forth by the regulating agency. These terms, as applied in similar statutes (AWA, FMIA, PPIA, Twenty-Eight Hour Rule), should have consistent meanings and be uniformly defined. See Boise Cascade Corporation v. United States Environmental Protection Agency, 942 F.2d 1427, 1432 (9th Cir. 1991) (stating that vacillating the meaning of a statutory term may render the statute superfluous). Thus, “animal” and “chicken” are exclusive terms that cannot be interchanged. A finding that chickens are animals within the Twenty-Eight Hour Law would render the PPIA, the act specifically enacted to protect the distribution and handling of chickens, superfluous. The Poultry Products Inspection Act, however has been in existence for over fifty years, which reinforces Congress’ intent to separately regulate the flow of poultry in

interstate commerce. The lower court, therefore, erred in holding that chickens are animals within the Twenty-Eight Hour Law.

This court should respectfully overturn the District Court's ruling finding chickens are animals within the Twenty-Eight Hour Law.

II. THE TWENTY-EIGHT HOUR LAW DOES NOT PRECLUDE WILLIAMS' CONVICTION BECAUSE THE TWENTY-EIGHT HOUR LAW DOES NOT PREEMPT FLORIDINA'S CRUELTY TO ANIMALS LAW.

Floridina's animal anti-cruelty law is not preempted by the Twenty-Eight Hour Law because Floridina has concurrent authority to prevent inhumane treatment of poultry in interstate commerce. Congress has the power to preempt state law, however, the burden of demonstrating Congressional intent to preempt, falls on the party claiming preemption. U.S. Const., Art. VI, cl. 2; Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516 (1992). In the present case, Williams must demonstrate Congress's intent to preempt state anti-cruelty law with the Twenty-Eight Hour Law. In addition the states have traditionally had the power to regulate domestic animals, and thus there is an assumption that the federal government cannot preempt state law without a clear and manifest purpose. English v. General Electric Company, 496 U.S. 72, 79 (1990); Kerr v. Kimmel, 740 F. Supp. 1525, 1529 (D. Kan, 1990). Therefore, Williams must demonstrate that Congress clearly and manifestly intended to preempt state anti-cruelty laws with the Twenty-Eight Hour Law.

There are four types of preemption which include express, conflict, obstacle, and field. Hillsborough v. Automated Medical Laboratories, 471 U.S. 707, 713 (1985). In every preemption analysis, the starting point is congressional intent which is best indicated by the statutory text. Medtronic, Inc v. Lohr, 518 U.S. 470, 485 (1996); Sprietsma v. Mercury Marine, 537 U.S. 51, 62-63 (2002). Express preemption occurs when Congress has expressly preempted state law in statutes texts. Hillsborough 471 U.S. at 713. However, express preemption does not

apply in the present case because the Twenty-Eight Hour Law does not contain any express preemption provision that would demonstrate Congress's intent to expressly preempt state anti-cruelty laws. 49 U.S.C. § 80502. Also, conflict preemption does not apply to the present case because a private party could comply with both, federal and state statutes, simultaneously. Id. ; 8 F.R.S § 621; See Florida Lime and Avocado Growers, Inc. v. Paul, 374 U.S. 132, 142-143 (1963). Moreover, Florida's statute, like the 28 hour law, criminalizes "depriving of necessary sustenance, drink . . . denied of adequate exercise," the terms "necessary" and "adequate" can only mean 28 hours under the Twenty-Eight Hour Law because of its inherent supremacy. Consequently, field and obstacle preemption are valid theories in the present case, however, both theories would be misapplied to the present facts and law.

A. Federal law elects not to dominate the field of poultry regulation because state and federal governments have concurrent authority.

The federal government cooperates with state and local government to dually safeguard poultry in interstate commerce. Northwestern Selecta, Inc. v. Munoz, 106 F.Supp.2d 223, 228-230 (D. P.R. 2000) (the PPIA was a pioneer state/federal program which coordinates efforts to protect consumers from adulterated poultry caused by deficient inspection). Field preemption occurs where federal law is so pervasive that Congress left no room for the states to supplement the law. Canton v. Conner, 278 F.Supp. 822, 826 (N.D. Fla. 1968). In every preemption analysis, the starting point is congressional intent which is best indicated by the statutory text. Medtronic, Inc., 518 U.S. at 485; Sprietsma, 537 U.S. at 62-63. The purpose of the Twenty-Eight Hour Law was, "To prevent cruelty to animals while in transit by railroad or other means of transportation from one State . . . into or through another State . . . popularly known as the Twenty-Eight Hour Law." U.S. v. Powell, 65 F.2d 793, 793 (Cir. 4 1933). Moreover, the intended effect of the Twenty-Eight Hour Law was, "obviously to prevent cruelty to animals, to

protect the property of shippers, *and* to prevent injury to the public health from the sale for food of cattle made ill and feverish by hunger, thirst, and exhaustion.” U.S. v. Lehigh Valley R. Co., 184 F. 971, 974 (W.D. NY 1911) (emphasis added). In addition, the Twenty-Eight Hour Law should be interpreted for its humanitarian effects, “The Act is to be construed to give effect to its humanitarian provisions,” U.S. v. Illinois Cent. R. Co., 303 U.S. 239, 243 (1938). Thus, the purpose of the Twenty-Eight Hour Law was to prevent animal cruelty and its intended effect was to protect public health from food contaminated by mistreated animals and should be interpreted to deliver humane treatment to animals during transit. In addition, Congress intended that the federal and state governments cooperate to ensure that poultry is regulated to prevent the spread of food borne illness to the public consumer, which was expressed in the PPIA, “The Secretary [of the USDA] is further authorized . . . to *cooperate* with appropriate State agencies in developing and administering State programs under *State laws* containing authorities at least equal to those provided in section 460 of this title.” 21 U.S.C. § 454(a)(2) (emphasis added).

The federal government maintains the fields of labeling and advisory logistics, while the state government shoulders enforcement and inspection. The federal and state governments exercise concurrent jurisdiction regulating poultry. Canton, 278 F.Supp at 826. In Canton, the owners and operators of establishments which process poultry for transportation and sale in interstate commerce challenged that a Florida poultry inspection law was preempted by the PPIA. Id. at 824. The court held that the Florida poultry inspection law was not preempted. Id. at 826. The court reasoned that the PPIA was designed to operate cooperatively, and acknowledged that the federal government’s inspection capability was “patently insufficient to protect the well being of the poultry consuming public” Id. ; See Rpt. Cong. Req. GAO-04-247 at 1-6 (Jan 2004). (General Accounting Office acknowledges inspection and enforcement

deficiencies). The federal government taking over the entire the field of poultry regulation would fly in the face pragmatics.

The rule and reasoning in Canton are controlling in the present case against Williams. In the present case, Williams is attempting to invoke preemption protection from the Twenty-Eight Hour Law because he is driving chickens in interstate commerce, just like the poultry transportation operators in Canton. 278 F.Supp at 824; (R. 2). However, William's actions in interstate commerce are not solely regulated and enforced by the federal government because of the federal government's inherent lack of police enforcement power which requires a greater amount of resources since poultry is vital to the nation's food supply. (R.1). ; David J. Wolfson, *Beyond the Law: Agribusiness and the Systemic Abused of Animals Raised for Food or Food Production*, 2 Animal L. 123, 126 (1996) (noting that the Attorney General rarely enforces the Twenty Eight hour law) ; 21 U.S.C. § 451 (noting that poultry and poultry products are an important source of the Nation's total supply of food). The federal government is expressly instructed in the PPIA to support state laws to ensure that the public does not eat "adulterated" foods that come from "filthy" conditions. 21 U.S.C. § 453- 454 ("filthy" conditions are defined as unsanitary conditions and commercial standards determining requirements of sanitation). The court in Canton recognized that the federal government and state governments cooperate to inspect and enforce state laws regulating poultry and have concurrent authority, "The Florida law, however, regulates the same product at the other end of the stream of commerce in the same manner in which it regulates similar products which are solely intrastate in character. . . Congressional regulation of one end of the stream of commerce does not, ipso facto, oust all state regulation at the other end." 278 F.Supp. at 826. See also [Swift & Co. v. Wickman, 230 F.Supp. 398 \(S.D.N.Y.1964\)](#) (noting the federal poultry law did not preempt weight and labeling

regulations promulgated under New York's state law). Also, based upon the cooperation provision in the PPIA, federal government's lack of police power enforcement infrastructure, and state government's established police power infrastructure, Congress did not envision spreading their wings over the entire poultry industry. See Levine at 1117-1121 (HMSA does not regulate chickens slaughter); See Espy 23 F. 3d at 498-499 (birds, thus chickens, are not protected by the AWA); See also "Treatment of Live Poultry Before Slaughter." 70 Fed. Reg. 56,624 (Sept 28, 2005) (reiterating that there is no specific federal humane handling and slaughter statute for poultry and that adherence to the PPIA promotes humane treatment). Therefore, just as the PPIA does not preempt Florida's poultry law, the Twenty-Eight Hour Law does not preempt Florida's anti-cruelty law because while Williams did comply with the general provision of the Twenty-Eight Hour Law of food, water, and resting, Williams violated Florida's supplemental requirement of sanitation and health allowed under the PPIA.

The 28 hours time limits for food, water, and rest were correctly applied in People v. Southern Pacific Company, 208 Cal. App. 2d 745 (Ca. App. 5 Dist. 1962). In Southern Pacific, a railroad carrier brought 41 head of cattle from Utah to California as a revenue freight shipment. 208 Cal. App. 2d at 747. The cattle were left without proper food and water because the co-signee had not accepted delivery. Id. The court held that even though the cattle were still in the defendant's custody, the state penal code prohibiting cruelty to animals in general was preempted by the Twenty-Eight Hour Law. Id. The court reasoned that the Twenty-Eight Hour Law preempted the state's general animal cruelty law because the Twenty-Eight Hour Law defined when a carrier's duty to feed and water animals must be exercised, the state law attempted to apply a shorter time period for feeding and watering. Id.

The duty of watering and feeding assigned by the Twenty-Eight Hour Law to Williams was performed; however, the supplemental duties imposed by Florida of freedoms to “spread limbs” and “adequate ventilation” were violated. 8 F.R.S § 621. In Southern Pacific, the state law attempting to redefined necessary food and water was preempted because the federal Twenty-Eight Hour Law set the definition of “necessary sustenance, drink . . . [and] . . . adequate exercise” which was determined in the Twenty-Eight Hour Law and is controlling given its federal nature. Id. The preemption of the state law in Southern Pacific is appropriate because the state law was attempting to re-define “necessary” and “adequate” feeding and watering, which is different than Florida’s specific requirement to ensure that animals are not tortured and not denied room to spread their limbs. 8 F.R.S §621. Moreover, the end result of preempting Florida’s anti-cruelty law using the Twenty-Eight Hour Law would be mass food borne illnesses among the general public stemming from chickens because of a regulatory vacuum of enforcement and health inspection, “in the absence of express preemption, and particularly in the case of occupy-the-field preemption, the courts really are [flying] on their own in deciding whether to displace state authority. Additionally, in cases where no conflict is evident, a holding that state authority is preempted leaves a regulatory vacuum.” Barry Friedman, *Valuing Federalism*, 82 Minn. L. Rev. 317, 345 (1997). Therefore, Southern Pacific’s correct determination of preemption by the Twenty-Eight Hour Law reinforces its non preemption to the present case because Florida’s animal cruelty law does invade an area of interstate commerce regulated by the federal government as in Southern Pacific; Florida’s law is the same as Florida’s poultry law that did not invade the PPIA’s area of regulation in Canton.

B. Obstacle preemption does not apply to Floridina's Cruelty to Animal Law because it does not frustrate the purpose or intended effect of the Twenty-Eight Hour Law.

The District Court erred in adopting the plain language meaning of the term “animal” and Williams’ conviction for violating Floridina’s animal cruelty statute is not preempted by the Twenty-Eight Hour Law because Floridina’s statute does not interfere with the purpose and intended effects of the Twenty-Eight Hour Law. Obstacle preemption occurs when state law, “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . . What is a sufficient obstacle is determined by examining the federal statute and identifying its purpose and intended effects.” Bates v. DOW Agrosciences LLC., 544 U.S. 431, 451 (2005); Crosby v. Natl. For. Trade Council, 530 U.S. 363, 373 (2000). The purpose of the Twenty-Eight Hour Law was to prevent animal cruelty and its intended effect was to protect public health from food contaminated by mistreated animals and should be interpreted to deliver humane treatment to animals during transit. See U.S. v. Illinois Cent. R. Co. at 243; See also U.S. v. Lehigh Valley R. Co., at 974.

The Floridina animal cruelty statute is not an obstacle to the purpose or intended effect of the Twenty-Eight Hour Law because Floridina’s law also attempts to prevent animal cruelty and protect public health from mistreated animals that can transfer illnesses to consumers. Obstacle preemption is not found where concurrent authority exists between the state and federal government. Bates, 544 U.S. at 451. In Bates, peanut farmers alleged that their crop was damaged by the application of respondent’s pesticide, and the court focused on whether the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) preempted a state law claim for damages. Id. at 434. The court held that the FIFRA did not preempt the state law governing pesticide. Id. The court reasoned that concurrent authority existed because, “states may ban or restrict the uses of pesticides that EPA has approved. . . they may also. . . use [pesticides] beyond

those approved by EPA,” and a literal reading of the federal act is consistent with the federal and state government exercising concurrent jurisdiction. Id. at 451.

Floridina’s animal statute is consistent with the purpose and intended effect of the Twenty-Eight Hour Law just like the state law in Bates. In Bates, the court held that the state law was not preempted because it had the concurrent authority to restrict use of pesticides that the federal government’s agency, the EPA, had approved. Id. In Bates, the state law was exercising “concurrent” authority, where in the present case Floridina is exercising the same authority because it is using its traditionally recognized power of protecting the “health and safety” of the public and express cooperation authority under the PPIA. Id. ; 8 F.R.S § 621. ; 21 U.S.C. §454(a)(2). Moreover, Floridina’s state law does not interfere with the purpose of preventing animal cruelty nor does it discourage humane practices which would cause public health problems. Furthermore, allowing Williams to manipulate the interpretation of the Twenty-Eight Hour Law would set the precedent that state lawmaking in the area of regulating poultry is invalid and suffocate the federal government with the dual responsibility of protecting animals for consumer sake and the animals themselves. (R. 2). Therefore, Floridina’s state law is not an obstacle to the Twenty-Eight Hour Law because both laws have the same purpose and Floridina’s law does not thwart the Twenty-Eight Hour Law’s intended effect of protecting public health of consumers.

Floridina’s law is aligned with the purpose and intended effects of the Twenty-Eight Hour Law and is not an obstacle to the Twenty-Eight Hour Law, even though Williams is selling dying, and dead chickens to the USDA. A state law cannot undermine the authority of delegated Congressional authority. Crosby v. National Foreign Trade Council, 530 U.S. 363, 374-378. In Crosby, Massachusetts passed a law barring state entities from purchasing goods and services

from companies doing business with Burma. *Id.* at 364. The court held that the state act was preempted under the Supremacy Clause. *Id.* The court reasoned that Congress did not intend to allow the state of Massachusetts to act at odds with the President's judgment on what economic sanctions were needed to be imposed on Burma. *Id.* at 374-375.

Consequently, the authority of the Secretary of Agriculture is not undermined by Floridina's law the same way the President's authority was undermined by Massachusetts's law. In the present case, Congress delegated to the Secretary of Agriculture the power to enforce the Twenty-Eight Hour Law and advisory authority to regulate poultry cooperating with state governments. 21 U.S.C. §454(a)(2). The Secretary was empowered by Congress to determine how animals should be treated during interstate commerce and the Secretary promulgated regulations describing conduct which is criminal and determined that conduct which meet commercial standards are appropriate. 21 U.S.C. §453-459; *See* National Chicken Council, *National Chicken Council Animal Welfare Guidelines and Audit Checklist*, <http://www.nationalchickencouncil.com/aboutindustry/detail.cfm?id=19> (Last accessed Jan. 5, 2008) (noting that chickens should be given adequate ventilation and sit in single layers rows, not on top of one another). Regardless of the fact that Williams is selling dying and dead chickens to the USDA that do not meet commercial standards for use as food, the USDA did not exempt his actions from Floridina's statute in an amicus curie brief nor express that Williams conduct met commercial standards of acceptable conduct. (R. 6); 9 C.F.R. §71.5 (2006) (noting that interstate movement of poultry must meet accepted commercial practices). Moreover, Congress, along with the USDA have expressed their intent to prevent the public from consuming food which has died by means other than slaughter and are considered "adulterer". 21 U.S.C. § 452. (noting that a chicken which has died by means other than slaughter are considered

“adulterated”). Likewise, Floridina’s animal cruelty law is a general prohibition on mistreatment to animals, which could be applied to conduct which the Secretary has defined as commercially acceptable in its regulations. 8 F.R.S § 621. But, Floridina’s law does not deprive the Secretary of the authority delegated by Congress because Floridina’s law is not targeting interstate commerce because it applies even-handedly on all conduct and the Secretary maintains the power to exempt Williams if it was their intent. Id. Finding obstacle preemption in the present case would effectively consent to Williams’ treatment of chickens used for food and would provide a free pass to anyone with a truck to stuff as many chickens as possible and transport them within 28 hours as if they were industrial trash, not poultry used for food. Also, allowing Williams to escape conviction with preemption would “clip the wings” of state governments to control poultry transportation through their state because it would set a precedent that would allow all state laws governing poultry transportation to be preempted. See e.g. Pa. Stat. Ann. Tit. 18 § 551(c) (Supp. 2006); Wash. Rev. Code Ann. § 16.52.185 (West Supp. 2006); W. Va. Code § 61-8-19(e) (2006); Utah Code Ann. §76-9-301 (5)(b)(ii) (2006). The substantial pervasion of state law in the area of poultry transportation would be abolished and leave the Twenty-Eight Hour Law as, “the single federal barrier to the spread of some tragic infection among our children.” (R. 6.). Finally, preempting Floridina’s lawmaking authority would “pigeonhole” animal rights organizations’ ability to enact progressive and humane treatment regulations for animals because their efforts would be restricted to only the federal government. Restricting animal rights organizations’ ability to influence animal regulations at the federal level would effectively “debeak” of any hopes of enacting more humane treatment of poultry because of the large presence of factory farm owners in the federal lobbying sector. Colin Kreuziger, *Dismembering the Meat Industry Piece by Piece: The Value of Federalism to Farm Animals*, 23

Lawineq 363, 383-391 (2005). Thus, Floridina's law is not an obstacle to the Twenty-Eight Hour Law because the state law does not deprive the Secretary of its Congressional authority nor attempt to redefine criminal conduct in interstate commerce.

CONCLUSION

For the foregoing reasons, this Court should overturn the District Court's ruling that chickens are animals within the Twenty-Eight Hour Law and uphold the District Court's ruling that Floridina's Animal Cruelty Act is not preempted by the Twenty-Eight Hour Law.

Respectfully submitted,
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