

STATEMENT OF ISSUES PRESENTED

- I. DOES THE TERM “ANIMALS” USED IN 49 U.S.C. § 80502 INCLUDE CHICKENS?
- II. IS 8 F.R.S. § 620 PREEMPTED BY FEDERAL LAW AS APPLIED TO THE PRESENT CASE?

FACTUAL BACKGROUND

Appellant, Mr. Jeffrey Williams, operates Truckin Chicken, a business that provides chickens for the USDA school lunch program. The chickens are so called “spent hens,” laying hens that no longer produce eggs, which he collects at points along the East Coast. Because these animals have no value to the egg farmers, standard industry practice is to simply throw living chickens into the dumpster like industrial trash, where they eventually die. Besides the terrible cruelty of this practice, these impromptu mass graves create a hazard to the environment and to human health. Mr. Williams prevents this inhumane and dangerous outcome by collecting the spent hens and transporting them in a large tractor-trailer to a chicken processor for the school lunch program.

In each trip Mr. Williams collects approximately ten thousand chickens in a non-stop drive through multiple states. Despite the logistical difficulty, none of his drives last longer than twenty-four hours. On one of these trips in 2008, Mr. Williams was pulled over for a broken taillight while passing non-stop through Florida on his way to New York. Though Mr. Williams always complied with the federal Twenty-Eight Hour Law, the officer arrested him for transporting the animals in conditions that violated the Florida Cruelty to Animals Law.

SUMMARY OF ARGUMENT

I. There is ample evidence that Congress intended the Twenty-Eight Hour Law's protection of "animals" to cover chickens. First, on its face, the statute applies to chickens because they are, and have always been, animals. Dictionaries of the period establish that this was the common meaning of the word. Furthermore, the record illustrates that this reality was not lost on the lawmakers of the 19th century. Similar animal cruelty laws written during the same era as the Twenty-Eight Hour Law cover poultry, proving that the legal definition of "animal" at the time also included the chicken. Second, the legislative history of the Twenty-Eight Hour Law shows that this inclusive definition of "animal" effectuates the dual purposes of Congress. Members of both houses regarded this as law to protect the well being of both the animals in transit and the people who eat them at their destination. Mr. Williams' long distance transport of spent hens for food implicates both of these concerns. Therefore this practice should be regulated by the Twenty-Eight Hour Law.

II. Application of Florida's Animal Cruelty Law to carriers in interstate commerce is preempted by the federal Twenty-Eight Hour Law. First, a presumption of preemption is appropriate where Congress legislates in fields of vital national concern such as interstate commerce. Next, the comprehensive and detailed standards of the Twenty-Eight Hour Law provide ample evidence of Congressional intent to occupy the field of interstate commerce in animals. The Twenty-Eight Hour Law creates specific and discrete standards applicable to every element of animal transport, from maximum length of time for confinement, minimum standards for rest periods, and imposition of liability for violations. Further, the federal interest in regulating interstate commerce in animals is so dominant as to imply exclusion of state regulation from the field. Finally, the Florida law stands as an obstacle to the realization of Congress' objectives. The Twenty-Eight Hour Law sanctions certain behavior and thereby

allows behavior it does not sanction. The Florida law contravenes Congress' goal to allow confinement of animals in transport for no more than 28 hours. As such, the District Court should be reversed.

ARGUMENT

I. CHICKENS ARE ANIMALS UNDER THE JURISDICTION OF THE TWENTY-EIGHT HOUR LAW

The District Court correctly held that the term “animals” as used in 49 U.S.C. § 80502, known as the Twenty Eight Hour Law, includes chickens. This is a matter of statutory interpretation, which is a question of law subject to de novo review by this court. *In re Koenig Sporting Goods, Inc.*, 203 F.3d 986, 988 (6th Cir. 2000). The federal Twenty-Eight Hour Law governs interstate transportation of animals. It mandates that animals in transit by vehicle or vessel shall not be confined for more than twenty eight consecutive hours without being unloaded in a humane way into pens equipped for feeding, water, and rest. 49 U.S.C. § 80502(a), (b). Because the term “animals” includes chickens, and Congress intended the Twenty-Eight Hour Law to control this exact situation, this statute governs Mr. Williams' business. He did not violate it.

- a. Chickens are “animals” covered by the Twenty-Eight Hour Law under the ordinary, contemporary, and common meaning of the word.

Statutory construction begins with analyzing the text. *Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004). If the meaning of “animal” as used in the Twenty-Eight Hour Law is clear, that is the end of the inquiry. *Id.* Originally, the Twenty-Eight Hour Law governed the interstate transport of “cattle, sheep, swine, or other animals.” In 1994, as part of a major revision of Title 49, Congress substituted simple language for “awkward and obsolete terms” in our transportation laws. H.R. Rep. No. 103-180, at 1 (1994). As part of this process, the phrase “cattle, sheep,

swine, or other animals” was shortened to simply “animals.” Revision of Title 49, Pub. L. No. 103-272, (1994). However, the amendment explicitly left the Twenty-Eight Hour Law “substantively unchanged.” *Id.* Thus, because the Twenty-Eight Hour Law retains its original scope, this court is charged with discerning the meaning of “animal” as used by Congress in 1873. Fortunately, the record shows the “ordinary, contemporary, and common meaning” of “animal” during that era included the chicken. *Perrin v. U.S.*, 444 U.S. 37, 42 (1979). Therefore, the district court’s construction of the Twenty-Eight Hour Law should be upheld as consistent with this statutory scheme designed to govern the transportation of all animals. *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 732 (9th Cir. 2007).

i. The common contemporary definition of animal included chickens.

The scientific and dictionary definitions of “animal” have long included the chicken. The district court noted that current dictionaries and scientific taxonomy unequivocally include chickens as animals. *Floridina v. Williams*, Cr. No. 08-1028, at 4-5 (D. Stinsonia). More importantly, these definitions are substantively unchanged from the year Congress passed the Twenty-Eight Hour Law. The dictionary definition of “animal” in 1873 was “1. An organized living being endowed with sensation and the power of voluntary motion. 2. An irrational being, as distinguished from man.” WILLIAM G. WEBSTER & WILLIAM A. WHEELER, *DICTIONARY OF THE ENGLISH LANGUAGE* (1872). There can be no argument that the chicken meets both of these definitions.

The district court correctly noted that “the law and the legislature...both fly on their own” and may define words without regard to dictionaries and technical definitions. *Floridina v. Williams*, at 5. However, such departures are not presumed. “[U]nless otherwise defined, words will be interpreted as taking their ordinary, contemporary, and common meaning.” *Perrin v.*

U.S., 444 U.S. 37, 42 (1979). The Twenty-Eight Hour Law does not define “animal,” therefore under *Perrin* the contemporary common meaning should control this case. The above definition shows that in 1873 chickens were commonly and ordinarily considered “animals.”

- ii. Contemporary laws show the legal definition of animal in 1873 included chickens.

The animal cruelty laws of the latter 19th century almost uniformly afforded chickens the protections of other “animals.” This supports the presumption above, that the contemporary legal definition of “animal” as used in the Twenty-Eight Hour Law conforms to the common dictionary definition of the era.

Some state animal cruelty prohibitions clearly defined the term “animal” to include chickens. The trailblazing New York “Act for the more effectual prevention of cruelty to animals” extended its protection to “any living creature.” N.Y. Rev. Stat. ch. 783, § 1 (1867), *repealed by* An Act Relating to Animals of 1874, N.Y. Rev. Stat. ch. 12, §§ 1-8 (also covering “every living creature”). New Jersey and Connecticut followed suit, drafting their own anti-cruelty laws to protect “any living animal or creature” and “all brute creatures and birds” respectively. N.J. Rev. Stat. § 64 (1873); Conn. Gen. Stat. § 2815 (1874). These laws are particularly significant because they were drafted at approximately the same time as the Twenty-Eight Hour Law, and defined the term in a broad way that included chickens. *Id.*

Later, the New Hampshire legislature copied the operative words of its 1878 anti-cruelty statute verbatim from the Twenty-Eight Hour Law, and defined the term “other animals” to include “all brute creatures and birds.” New Hampshire General Laws of 1878: Trespasses, Malicious Acts, etc., 1878 N.H. Laws 281, §§ 26-30 (1878). In 1890, Maryland enacted its first

animal cruelty law to protect “every living thing except man.” Maryland General Laws: Cruelty to Animals, 1890 Md. Laws ch. 198 § 46C (1890).

The only state to definitively exempt chickens from cruelty protection in the late 19th century was Nebraska. However, that law is distinguishable from all the others, including the Twenty-Eight Hour Law, because it listed the particular species it covered. Offenses Related to Domestic Animals, Neb. Stat. ch. 10 §§ 63-82 (1869). The other statutes used the generic term “animal” like the Twenty-Eight Hour Law, and defined it to included chickens.

Like the Twenty-Eight Hour Law, some statutes protected “animals,” without explaining the meaning. Fortunately, laws in this category were interpreted to protect chickens and other birds. For example, Massachusetts passed its own Twenty-Eight Hour Law in 1869 as part of a larger anti-cruelty law. See Mass. Gen. L. ch. 344, §§ 1, 3 (1869). However, the statute “nowhere designated any particular animal or species” for protection “but uniformly used the words ‘any animal’ or ‘animals.’” *Commonwealth v. Turner*, 14 N.E. 130, 132 (Mass. 1887). In *Turner*, the defendant argued that Massachusetts law did not protect foxes because they are wild and noxious creatures. Rejecting this narrow construction, the court held that “[t]he word ‘animal,’ in its common acceptance, includes all irrational beings” and that “[i]t was used in that sense in 1869...” *Id.*

Pennsylvania’s 1869 anti-cruelty law did not have a specific transportation section, but it broadly prohibited people to “wantonly or cruelly ill-treat, overload, beat, or otherwise abuse any animal.” Act of March 29, 1869, P.L. 22, 18 P.S. §§ 3104-3109. In an action similar to this case, the owner of 2500 chickens found in “frightful condition” was prosecuted for cruelty related to their feed. *Commonwealth v. Barr*, 1916 W.L. 3671, *1 (Pa. Quar. Sess. 1916). While the court found that the defendant lacked the requisite intent, there was no debate about the scope of the

law. The court implicitly held the obvious; the chickens were protected “animals” under the 1869 animal cruelty law.

The lesson from these contemporary animal cruelty laws is clear; statutes written in the post-civil war era to protect “animals” covered poultry. Moreover, these contemporary statutes show that when Congress drafted the Twenty-Eight Hour Law the legal definition of “animal” matched the common dictionary and scientific definitions, and included the chicken. There is nothing in the text of the statute that makes the Twenty-Eight Hour Law an anomaly of the period. On the contrary, as in all other contexts of 1873, the federal statute considers the chicken an animal.

- iii. Prior interpretations by other courts and administrative agencies do not exclude chickens from the term “animals.”

Existing interpretations of the Twenty-Eight Hour Law do not exclude chickens from the definition of “animals.” To the contrary, one of the earliest courts to consider the scope of the Twenty-Eight Hour Law concluded that it covered “all animals that might be shipped in crowded cars or boats, and which would suffer also for the want of food, water, or rest.” *Chesapeake & O. Ry. Co. v. American Exch. Bank*, 23 S.E. 935, 937 (S.Ct. of Appeals of Virginia, 1896). The opinion by the Virginia appellate court in *Chesapeake & O* is persuasive because it textually analyzed the meaning of “animals” before the turn of the 20th century. *Id.* It is the nearest thing to a direct contemporary interpretation of the Twenty-Eight Hour Law, and it would allow for the protection of poultry.

Thirty years after the *Chesapeake & O* decision, another state court explicitly held that the Twenty-Eight Hour Law “does not apply to poultry; birds are not animals.” *Clay v. NY Cent. R. Co.*, 231 N.Y.S. 424, 428 (N.Y.A.D. 3rd Dept, 1928). As a New York state case, *Clay* is not

controlling here. Furthermore, the court based its decision solely on its summary conclusion that “birds are not animals.” As such, its persuasive value is minimal because there is no analysis to support this departure from the plain meaning of “animal.”

Lastly, the administrative regulations implementing the Twenty-Eight Hour Law do not exclude chickens. The Department of Agriculture promulgated feeding recommendations for different kinds of livestock during each mandatory rest. 9 C.F.R. § 89.1(a). The regulation makes no mention of feed for chickens. However, the text of the Twenty-Eight Hour Law does not limit its coverage to livestock, and there is no indication the agency definitively interpreted the Act to only cover livestock. By contrast, the Humane Slaughter Act protects only “livestock,” not all “animals.” 7 U.S.C. § 1901. The agency correctly interpreted that statute to exclude poultry. *Levine v. Connor*, 540 F.Supp.2d. 1113 (N.D. Cal. 2008). But the USDA has not taken a position on whether the Twenty-Eight Hour Law covers the transport of chickens. Because neither the text of the statute or the agency interpretation limit its scope to livestock, the regulations on livestock feed offer no guidance on whether chickens are “animals.”

- b. The Legislative History of the Twenty-Eight Hour Law shows that the chicken must be considered an “animal” in order to effectuate the purposes of the statute.

The Twenty-Eight Hour Law addressed a twofold government concern; “first, the treatment of dumb animals; and next, the health of the community where they are to be consumed as food.” Cong. Globe, 42nd Cong., 2d Sess. 4229 (1873). Though textual analysis of the statute shows that it covers chickens as “animals,” any remaining doubt can be resolved by turning to the legislative history of the act. Resorting to legislative history “is only justified where the face of the statute is inescapably ambiguous.” *Garcia v. U.S.*, 469 U.S. 70, 76 n.3 (1984) (quoting *Schwegmann Brothers v. Calvert Distillers Corp.*, 341 U.S. 384, 395 (1951)).

The appellants may argue that “animal” remains ambiguous, or that the common-law meaning illustrated by other statutes and decisions is “inconsistent with the statute’s purpose.” *Taylor v. U.S.*, 495 U.S. 575, 595 (1990). However, the legislative history unambiguously shows that the purposes of the Act are best effectuated by protecting chickens as “animals” under the Twenty-Eight Hour Law.

- i. Chickens must be included to further the humane purpose of the statute.

The Twenty-Eight Hour Law is foremost a “humane rather than a sanitary regulation.” *Chesapeake & O. Ry. Co. v. American Exch. Bank*, 23 S.E. 935, 937 (1896). The floor debates on this “wholesome bill” are replete with examples of members of both chambers condemning the “detestable crime of cruelty to dumb animals” in the broadest terms. Cong. Globe, 42nd Cong., 2d Sess. 4231 (1873). In short, the legislative intent was to “prevent cruelty and injury to animals that were shipped long distances...” *Chesapeake & O.*, at 937. The Twenty-Eight Hour Law created a consistent, nationwide rule to prevent cruelty to animals transported across different state jurisdictions. Mr. Williams trucks large numbers of animals across long distances to be used in the USDA school lunch program. The Twenty-Eight Hour Law was written generally to stop “great inhumanity...practiced towards animals that are forwarded for a market.” Cong. Globe, 42nd Cong., 2d Sess. 4228 (1873). Therefore, the primary purpose of the Twenty-Eight Hour Law is to regulate this exact behavior.

- ii. Chickens must be included to protect human health.

Congress also designed the Twenty-Eight Hour Law to protect the health and welfare of American meat consumers. For example, when debating the bill members of the Senate expressed concerns over how cattle mistreated in transit were “brought into market sick and

sore” and then slaughtered and sold, “impairing health.” *Id.* at 4227. The bill’s sponsor in the House explained that cruelty to animals in transit is “detrimental to the health of the people of those cities who must eat the flesh of those animals” because they “are unawares taking into their stomachs the seeds of disease and death.” *Id.* at 2367. His final remarks described the Twenty-Eight Hour Law as “a bill which proposes to guard the life and health of every man, woman, and child in the country...” *Id.* In short, the congressional record clearly establishes that the purpose of the act was to protect the well-being of both animals and people. In this way, Twenty-Eight Hour Law represents Congress’ determination on how to best manage the risk animal transport poses to human health. This statute plainly allows Truckin Chicken to continue its normal operations because this transport is not cruel.

- iii. The Twenty-Eight Hour Law was intended to evolve to cover all “other animals” transported long distances.

The Twenty-Eight Hour Law was written decades before the birth of the American poultry industry, during a time of explosive growth in western livestock. During 1873, cattle were driven by the tens of thousands up the famous Chisholm Trail from Texas, and even more sheep were herded onto rail cars from across the hills of Wyoming and beyond. Handbook of Texas Online – Chisholm Trail, <http://www.tshonline.org/handbook/online/articles/CC/ayc2/>; Wyoming Tales and Trails – Sheep Photos, <http://www.wyomingtalesandtrails.com/sheep.html> (last visited 1/4/09). All of these animals were destined for the stockyards of the Midwest, and then usually on to the distant East Coast. Cong. Globe, 42nd Cong., 2d Sess. 2367 (1873). Despite these inroads, pork remained the most popular meat on the American table. USDA, Pork Fact Sheet, http://www.fsis.usda.gov/FactSheets/Pork_From_Farm_to_Table/index.asp (last visited 1/4/09). Meanwhile, raising chickens remained a small scale enterprise. The mass production

and distribution of poultry would not begin in the United States until the invention of the broiler hen, some fifty years later. The National Chicken Council: US Chicken Industry History, <http://www.nationalchickencouncil.com/aboutIndustry/detail.cfm?id=16> (last visited Dec. 28th, 2008). Cattle, sheep, and swine were specifically discussed on the floor and listed in the statute because they represented the vast majority of animals transported at the time. Cong. Globe, 42nd Cong., 2d Sess. 2367¹, 4226-4236 (1873). This historical background explains why there was no mention of other types of animals.

But, the Twenty-Eight Hour Law is not limited to these three species. It protects other animals. Efforts to artificially limit its coverage have failed because the expansive text and purposes of the statute give no ground on which to exclude other species. For example, it protects horses and mules even though they are not shipped for consumption. *Chesapeake & O.*, at 937. In 1873 there were no organized Emu, Alpaca, or Buffalo farming operations that required long distance transport, but can there be any argument these animals are not “other animals” covered today? Congress had good reason to cover only animals raised for food, quadrupeds, mammals, or just the three listed species. But it did not; it applied the Twenty-Eight Hour Law to other animals. Chickens were not mentioned because poultry was not yet farmed and transported long distances. However, with the purposes of the statute in mind it is no surprise that Congress used the unqualified term “other animals” to protect chickens and other animals not transported in 1873.

¹ “Statistics show that they received in the cities of Chicago and St. Louis, which may be regarded as the two great cattle depots of the West, in 1870, [774,000] head of horned cattle, [521,000] of which were reshipped mainly to the eastern cities for the purpose of food; and in connection with that there were received into those same cities during that year over [2.5 million] hogs and sheep, [1.155 million] of which were reshipped to the eastern market.”

II. THE FEDERAL TWENTY-EIGHT HOUR LAW PREEMPTS THE FLORIDINA ANTI-CRUELTY STATUTE AS APPLIED TO APPELLANT

The Supremacy Clause of the U.S. Constitution provides that “This Constitution, and the law of the United States *** shall be the supreme Law of the Land *** any Thing in the Constitution or laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. By that language, the Supremacy Clause operates to preempt state laws that conflict with federal law.

In the absence of an express preemptive provision, preemption of state law may arise in two ways: (1) where federal law creates a scheme of federal regulation so pervasive as to make reasonable the inference that Congress left no room for states to supplement it (“field preemption”), or (2) where federal law stands in direct conflict with state law (“conflict preemption”). *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 515 (1992); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947); *Hillsborough County v. Automated Medical Labs*, 471 U.S. 707, 713 (1985). Conflict preemption, in turn, arises where compliance with both state and federal laws is impossible or where “under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941); *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000).

The federal Twenty-Eight Hour Law preempts application of Floridina’s Anti-Cruelty Law under the facts of the present case for two reasons. First, Congress intended to occupy the field of interstate animal transport to the exclusion of the states. Existing federal law governing interstate animal transport is pervasive and the federal interest in regulating interstate animal transport is dominant. Second, the Floridina Anti-Cruelty Law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Twenty-Eight Hour

Law. This court should reverse the decision below and acquit Appellant of the charges against him. The court should review the District Court's legal conclusions, including its interpretation of the statutes at issue, *de novo*. *U.S. v. Kerley*, 544 F.3d 172, 178 (2nd Cir. 2008).

- a. The Floridina Cruelty to Animals Law is preempted as applied to interstate animal transport because Congress intended to occupy the field.

Field preemption exists when a federal law creates a scheme of federal regulation “so pervasive as to make reasonable the inference that Congress left no room for states to supplement it.” *Rice*, 331 U.S. 218, 230 (1947). The District Court erroneously found that Congress had not occupied the field of interstate commerce in animals based on three distinct errors of law. Mem. Op. at 9 – 10. First, the District Court erroneously applied a presumption against preemption of state law. *Id.* at 9. Where Congress legislates regarding issues “so intimately blended and intertwined with responsibilities of the national government,” no such presumption is appropriate. *Hines v. Davidowitz*, 312 US. at 66. Next, the District Court failed to engage in even the most rudimentary inquiry into Congress intent in passing the Twenty-Eight Hour Law. The detail and comprehensiveness of the federal law's provisions provide ample evidence that Congress intended to occupy the field of interstate transport of animals. Finally, the District Court failed to analyze the gravity of the federal interest in interstate animal transport. A presumption in favor of field preemption applies where the federal interest is sufficiently dominant, as in the field of interstate commerce. *Id.*

- i. This court should apply a presumption in favor of preemption on review.

The court below erroneously found that a presumption against preemption applied to determination of whether the Twenty-Eight Hour Law was intended to occupy the field of interstate animal transport. Although it is true that consideration of field preemption issues

begins with “the assumption that the historic police powers of the States [are] not to be superseded by Federal Acts unless that [is] the clean and manifest purpose of Congress,” the court below erred in holding that presumption is applicable to the facts of the present case. Quite contrary, the opposite presumption is appropriate where “the subject matter of federal regulation is intimately blended and intertwined with responsibilities of the national government.” *Hines*, 312 U.S. at 66. Because the state law conflicts with the federal law only when it is applied to carriers of animals in interstate commerce, the nature of the conflict alone “raises an inference of exclusion.” *Id.*

The District Court held that because states historically regulated animal cruelty under their police powers, analysis should begin with a presumption against preemption. Mem. Op. at 9. The District Court’s analysis was thus fatally flawed; it neglected to properly define the zone of conflict between the federal and state laws. The District Court’s assertion that “animal cruelty has always been a local matter” was accurate, but utterly irrelevant to the disposition of this case. Mr. Williams was engaged in transporting animals across state borders, Mem. Op. at 2, and the federal government has created a uniform standard of care for carriers such as Mr. Williams. 49 U.S.C. § 80502. The conflict arises because Floridina’s Anti-Cruelty Law, when applied to carriers in interstate commerce, sets standards that are substantively different from federal standards. 8 FRS § 620. Because the conflict only arises where the Floridina law is applied to carriers in interstate commerce, the proper inquiry is whether *interstate transport in animals* is a matter traditionally regulated by the states.

The subject matter of federal regulation can be “so intimately blended and intertwined with responsibilities of a national government” that its nature alone raises an inference of exclusion. *Hines*, 312 U.S. at 66. The federal government’s interest in regulating interstate

commerce “has been manifest since the beginning of our Republic and is now well established.” *U.S. v. Locke*, 529 U.S. 89, 99 (2000). In fact, the Federalist Papers regularly referred to the necessity to regulate interstate commerce, “without embarrassment from intervention of the separate States,” as one of the reasons for adopting the Constitution. Federalist Nos. 44, 12, 64 (accessed at <http://www.foundingfathers.info/federalistpapers>, January 2, 2009). The U.S. Constitution solidifies federal ascendancy in interstate commerce, granting “Congress *** the power *** to regulate commerce *** among the several states. U.S. Const. Art. I, sec. 8, cl. 3. It can hardly be argued that the federal interest in regulating interstate commerce is not tantamount. Therefore, this court should apply a presumption that the state law is preempted because it impinges on the federal power to regulate interstate commerce. *Hines*, 312 U.S. at 66.

Appellant does not dispute that Florida’s Anti-Cruelty Law is preempted as applied to animal cruelty within the state. However, when animals enter the stream of commerce they cease to be of purely local concern. Recognizing the national concerns inherent in animal transport, Congress enacted the Twenty-Eight Hour Law. Because Mr. Williams was moving animals in interstate commerce, and because interstate commerce is of tantamount federal interest, this court should apply a presumption of federal preemption its analysis.

- ii. The Twenty-Eight Hour Law comprehensively occupies the field of interstate animal transport, leaving no room for supplementary state legislation.

Federal law precludes state action where “Congress has evidenced its intention to completely preempt the field sought to be regulated, even though the state action is merely complimentary to the federal law.” *Campbell v. Hussey*, 368 U.S. 297, 330 (1962). In the absence of an express statement of Congress’ intent, “exclusion of state action may be implied from the nature of the legislation and the subject matter.” *Bethlehem Steel Co. v. New York State*

Labor Relations Board, 330 U.S. 767 (1947). The test for field preemption looks to whether “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.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. at 230. The Twenty-Eight Hour Law creates a scheme of federal regulation of interstate animal transporters that preempts the field. *People v. Southern Pacific Co.*, 208 Cal.App.2d 745 (Ca. Ct. App. 1962). Under the federal law there can be only one standard for transporters, a standard that is “uniform” and that eliminates all confusion by dictating when a duty to feed, water, and rest animals arises.

Where Congress has preempted a field by creating “uniform” standards, state laws must acquiesce even where they are “supplementary” and share the same general goals. *Campbell*, 368 U.S. at 301; *Commonwealth of Pennsylvania v. Nelson*, 350 U.S. 497, 504 (1956). In *Hussey*, the Court held a state law which supplemented federal tobacco classification standards was unenforceable. 368 U.S. at 301. Critical to the Court’s analysis was that the federal law set a specific and uniform standard that tobacco was to be classified according to its physical characteristics, and not by geographic origin. *Id.* That was sufficient evidence that the federal government had occupied the field of tobacco classification and the state law was precluded despite that it shared the same general goals as the federal act, only went further in distinguishing between strains of tobacco. *Id.* at 302.

Like the federal laws governing tobacco classification at issue in *Campbell*, the Twenty-Eight Hour Law creates a single, “uniform” standard, applicable to all animal carriers in interstate commerce. 49 U.S.C. § 80502. The statute imposes liability specifically on certain named entities, 49 U.S.C. §80502(a)(1), specifies the maximum time of confinement, *id.*, specific provisions for sheep, 49 U.S.C. § 80502(a)(2), an exception, 49 U.S.C. §

80502(a)(2)(A), a procedure for extending the time of confinement, 49 U.S.C. § 80502(a)(2)(B), a method and minimum standards for unloading and loading, 49 U.S.C. § 80502(b), a minimum time of rest, 49 U.S.C. § 80502(b), the party responsible for the cost of resting the animals, 49 U.S.C. § 80502(b), the minimum and maximum fine for violations, 49 U.S.C. § 80502(d), and an enforcement procedure, 49 U.S.C. § 80502(d). The federal act is a single, comprehensive scheme that by its terms assures uniform humane treatment of animals transported interstate and imposes uniform liability on all carriers. Its terms are so specific and so pervasive that Congress clearly left no room for the states to supplement it.

Hillsborough County v. Automated Medical Laboratories, 471 U.S. 707, is not to the contrary. There, the Court held that Florida could enforce laws supplementing federal regulation of blood plasma collection, but under a very different legal framework. *Id.* at 723. Specifically, the Court's analysis focused on a 1973 statement by the FDA, the agency tasked with enforcing the federal statute at issue, that the agency did not intend its regulations to be exclusive of state regulation. *Id.* at 714. No such statement has been made by the Department of Transportation with regard to the Twenty-Eight Hour Law. Further, the conflict between federal and state law in *Hillsborough* occurred as to laws concerning the health and welfare of state citizens, a matter traditionally regulated under the states' police power, and therefore a presumption against preemption was appropriate. *Id.* at 715. In the present case, as demonstrated in the preceding section, no such presumption is appropriate. Even assuming that such an assumption is here appropriate, the specificity and breadth of the federal law is compelling evidence that Congress intended to exclude state regulation.

The District Court's analysis did not engage in even a scintilla of statutory construction in reaching the conclusion that Congress did not intend to occupy the field with the Twenty-Eight

Hour Law. However, Congressional intent, as evidenced in the language and structure of the statute, is the touchstone of preemption analysis. *Cipollone*, 505 U.S. at 516. The comprehensiveness and detail of the Twenty-Four Hour Law is clear evidence of Congressional intent to occupy the field of interstate animal transport to the exclusion of state laws such as Florida's Anti-Cruelty Law.

- iii. The federal interest in interstate animal transport is so dominant as to exclude supplementary state regulation.

Field preemption can also be found where an Act of Congress “touch[es] a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.” *Rice*, 331 U.S. at 230; *Nelson*, 350 U.S. at 504; see also *Hines*, 312 U.S. 52 (holding federal interest in immigration and naturalization is dominant and exclusive of supplementary state laws). For example, in *Nelson* the Court found that the federal government occupied the field of sedition because it is an area “in which the federal interest is so dominant that the federal system [must] be assumed to preclude enforcement of state laws on the same subject.” *Id.* at 504. In finding the national interest in prosecuting sedition supreme, the *Nelson* Court found sedition is “a matter of vital national concern.”

Similar to the federal interests in preventing seditious acts and regulating immigration and naturalization, the interest in regulating interstate commerce in animals is overriding. Several conflicting national concerns are associated with interstate commerce in animals, including preventing the spread of disease, facilitating the engines of commerce, assuring the safety and security of the national food supply and preventing abuse to animals. The nature of the subject matter regulated by the Twenty-Eight Hour Law leads to the reasonable inference that

Congress intended to occupy the field of animal transport to the exclusion of the states, striking a balance between the conflicting national concerns involved.

b. The Florida Cruelty to Animals Law is an obstacle to federal objectives.

State law is preempted where, “under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Hines*, 312 U.S. at 67. What is a sufficient obstacle is a matter of judgment informed by examining the entire scheme of federal regulation and identifying its purpose and intended effects. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000). If the federal act’s purpose cannot be accomplished in the presence of state law, “the state law must yield to the regulation of Congress within the sphere of its delegated power.” *Savage v. Jones*, 225 U.S. 501, 533 (1912).

A state law that sanctions what federal law allows is an obstacle to accomplishing the full purposes of federal law. *Crosby*, 530 U.S. at 377 - 380. In *Crosby*, the Court found a Massachusetts law that restricted the authority of state agencies to purchase goods from companies that do business with Burma was an impermissible obstacle to the accomplishment of Congress’ full objectives under the Burma Act. *Id.* at 373. In so holding, the Court recognized that the state statute “penaliz[es] individuals and conduct that Congress explicitly *** excluded from sanctions.” *Id.* at 378. The Court found that distinction sufficient evidence that the state law was an obstacle to the federal law. Significantly, the Court held “[s]anctions are drawn not only to bar what they prohibit but to allow what they permit, and the inconsistency of sanctions here undermines the congressional calibration of force.” *Id.* at 380.

Like the law at issue in *Crosby*, the Twenty-Eight Hour Law imposes sanctions on certain parties, those who confine animals in a vessel for greater than 28 hours. 49 U.S.C. § 80502(a).

Also like the law at issue in *Crosby*, the sanction of certain conduct implies the allowance of other conduct, i.e. confining animals in a vessel for less than 28 hours. In setting such a bright-line rule, Congress aimed to protect animals from cruelty and to “make[] certain when and where the common-law duty of the carrier for the preservation and comfort of the stock should be exercised.” *Louisville & N.R. Co. v. Stiles, Gaddie & Stiles*, 133 Ky. 786, 787 (Ky. 1909); *Lynn v. Mellon*, 24 Ala.App. 144, 147 (Ala. App. 1930). Allowing the several states to create different standards of care for carriers while passing through their states would upset these twin aims of Congress.

If local political subdivisions of every state were to impose different standards of care for animals in interstate commerce, the goal of federal government to protect animal welfare while facilitating interstate commerce would be defeated. See *Locke*, 529 U.S. at 97 (holding state law setting standards for oil tankers stricter than federal standards unenforceable). Congress’ goal of setting a definite time and method of resting animals would be completely frustrated, replaced by a confusing patchwork of different standards in the many states carriers pass through. Because enforcement of Florida’s animal cruelty law under the facts of this case is an obstacle to realizing Congress’ goals, implicit in the text and structure of the Twenty-Eight Hour Law, the state law must yield.

CONCLUSION

Mr. Williams was transporting chickens in interstate commerce subject to the exclusive jurisdiction of federal law. Because chickens are “animals” under the Twenty-Four Hour Law, and because said law preempts enforcement of state regulation in the field of animal transport, this court should reverse the court below and acquit Mr. Williams of the state law charges against him.

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.

Team Member: Zachary Norris

Team Member: Andrew Freeman

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