IN THE
STATE OF FLORIDINA
COURT OF APPEALS
DIVISION THREE
January Term, 2009
Cr. No. 08-1028

THE PEOPLE,
RESPONDENT/CROSS-APPELLANT

v.

JEFFREY WILLIAMS,
APPELLANT/CROSS-RESPONDENT

On appeal from the
State of Floridina
District of Stinsonia

BRIEF FOR THE RESPONDENT/CROSS-APPELLANT

Counsel for Respondent/Cross-Appellant
Team 13

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Cases

Constitutional Provisions

Other

STATEMENT OF THE ISSUES

1. Did the District Court improperly interpreted the term "animals" in the Twenty-Eight Hour Law, 49 U.S.C. §80502, to include chickens?

2. Did the lower court correctly conclude that the appellant's conviction should not be vacated under federal preemption doctrine when Congress has not expressed any preemptive intent and such preemptive intent cannot be implied?

STATEMENT OF THE FACTS

Appellant did not deny any of the facts set forth in the charging document and agreed to a stipulation of the facts. *Briefing Order,* 1. Appellant is the sole proprietor of Truckin' Chicken. Truckin' Chicken specializes in transporting live birds in large tractor-trailor trucks. Most of Truckin Chicken's work involves transporting "spent hens." Spent hens are chickens that can no longer lay eggs. R. 1.

When appellant is transporting "spent hens," approximately ten thousand chickens are compacted into a tractor-trailer truck. R. 2. The chickens receive no food, water, ventilation, or veterinary care during transit. Upon arrival at their destination, approximately fifteen percent of the chickens are usually dead. R.2.

The appellant's trips always traverse at least two states. He never stops between his starting point and destination, and the trips never last more than twenty-four hours. R.2.

While traveling through Floridina on the way to New York in 2008, a Floridina Highway Patrol officer stopped appellant because one of his taillights was out. The patrol officer found a

large number of dead chickens, live chickens standing on top of dead chickens, and chickens that appeared to be unable to stand upright. R. 2. The officer consulted with the local animal control officer, who reported that the conditions were a violation of Floridina's Cruelty to Animals Law. Based upon this information the highway patrol officer arrested the appellant. R. 2.

Appellant was charged and indicted on forty-five counts of animal cruelty. Appellant raised a sole legal defense, that the state's right to bring the action arguing the state anti-cruelty law was preempted by 49 U.S.C. § 80502 (2006), also known as the "Twenty-Eight Hour Law." R. 2.

While the District Court found that appellant's conduct was subject to the "Twenty-Eight Hour Law," the court also found the federal law did not preempt the state prosecution. R. 3. Therefore, appellant was convicted on all forty-five counts. It is from this ruling that he now appeals, arguing that he was subject to the Twenty-Eight Hour Law and that his conviction should be overturned and his indictment dismissed because application of the state anti-cruelty law violates the Supremacy Clause of the United States Constitution. *Briefing Order*, 1-2.

The State cross-appeals the District Court's ruling that chickens are covered by the "Twenty-Eight Hour Law." *Briefing Order*, 2.

ARGUMENT

POINT I

THE COURT SHOULD REVERSE THE DISTRICT COURT'S RULING THAT THE TERM "ANIMALS" IN THE TWENTY-EIGHT HOUR LAW INCLUDES CHICKENS.

A. Standard of Review.

This Court reviews a district court's interpretation of a federal statute subject to *de novo* review. *United States v. Sanchez*, 225 F.3 172, 175 (2d Cir.2000).

B. Chickens Are Not Included in the Group of "Animals" Covered by the Twenty-Eight Hour Law.

This Court should reverse the district court's ruling that chickens are considered animals under the Twenty-Eight Hour Law. The question of whether a chicken is an "animal", especially under 49 U.S.C. §80502, the Twenty-Eight Hour Law, is an issue of first impression for the Floridina Courts. R. 4. This federal statute governs the interstate transport of animals. The current statute states in part, that those engaged in such interstate transport

> (a) may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest.

R. 3.

Accordingly, Congress concedes that it is humane to transport animals for a period of less than twenty-eight hours without a break for feeding, water, and rest. R. 4.

Appellant argues that analysis of the issue of whether 49 U.S.C. §80502 includes chickens in the group of animals it covers may easily be settled by interpreting the plain meaning of the statutory language. *Id*. Thus, appellant contends that the statute's use of the term "animal" necessitates a finding that it includes chickens. R. 5. Although the statutory language of 49

U.S.C. §80502 is clear, the judicial inquiry must not end here if ambiguity amongst the cases and codes exists. *Id*.

1. The Plain Language of the Twenty-Eight Hour Law Clearly Indicates that it Intends to Govern the Interstate Transport of Animals.

The plain language of the Twenty-Eight Hour law clearly evidences Congressional intent to govern the interstate transport of animals. Specifically, 49 U.S.C. §80502 states that "animals" involved in interstate transport may not be confined for a period exceeding twenty-eight hours. R. 3. The dictionary defines an animal as:

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

Webster' Encyclopedic Unabridged Dictionary of the English Language 59 (New Rev. Ed. 1996).

Thus, the District Court properly noted that "there can be no scientific doubt" that a chicken meets the definition of an animal. R. 4. Accordingly, appellant contends that the statutory phrase "animal" must include chickens. R. 5.

Legislative history and case law, however, indicate that the Courts are not mere servants to either science or semantics. *Id*. It is the function of the judiciary to acknowledge that although chickens may biologically be animals, this construction is inconsistent with Congress' statutory scheme.

2. Legislative History Indicates that Chickens are Generally Considered Birds and Are Outside the Scope of The Twenty-Eight Hour Law's Statutory Scheme.

Numerous courts have come to the conclusion that chickens are birds in contrast to traditional "beasts of the field." *State of Kansas v. Clairborne*, 505 P.2d 732 (1973); *State v. Stockton*, 85 Ariz. 153 (1958). As a result, chickens are outside the scope of the Twenty-Eight Hour Law's statutory scheme.

The Supreme Court of Kansas in *Clairborne*, dealt with the issue of whether gamecocks are animals within the meaning of its state animal cruelty statute. The statute, *K.S.A. 1972 Supp. 21-4310*, defined cruelty to animals as "subjecting any animal to cruel mistreatment." *Id*. at 733. In resolving this issue, the Kansas Court referred to the animal cruelty statutes of Massachusetts, New Mexico, and Arizona for guidance. Accordingly, the Court held that it was "unable to find from the words, context, subject matter, spirit or purpose of the act a clear indication of an intent on the part of the legislature to include gamecock in the category of animals." *Id*. at 734.

Moreover, the Court in *Clairborne* established the commonly shared view that:

> Even though we must recognize that biologically speaking a fowl is an animal, a sentient, animate creature as distinguished from a plant or inanimate object…we harbor the opinion that in the common everyday experience of mankind, chickens are seldom thought of animals, rather they are birds, with avian characteristics, in contrast to beasts of the field.

Id. at 735.

Thus, the Court held that gamecocks are outside the scope of the anti-cruelty statute. Specifically, the Court noted that its role is limited to the interpretation of the law as it finds it, and since the legislature has not evinced an intention to include birds; it must respect that limitation. *Id*. Accordingly, if birds are to be "brought within the protection of the statute, the legislature is fully competent to do so." *Id*.

The Court in *State v. Burford*, 65 N.M. 51 (1958) dealt with the identical issue raised in *Clairborne.* In examining the applicability of an anti-cruelty statute to roosters, the Court in *Burford* held that the language of the statute "seems to apply only to brute creatures and work animals." *Id*. at 1115. The statute in question prohibits mistreatment to "any animal". *Id*. at 1110. Thus, the Court reasoned that due to the failure of the legislature to specifically evidence an intent to prohibit cockfights, the statute did not apply to fowl. Moreover, the Court held that "any prohibition of cockfighting must come from the legislature." *Id*. at 1115.

One case which held that cockfights were prohibited under a state anti-cruelty law based its determination on the presence of clear legislative intent. *Brackett v. State*, 236 S.E. 2d 689 (1977). The Court in *Brackett* reasoned that the multitude of state which have held their anti-cruelty statutes to not include cockfighting was solely due to a lack of "legislative intent to include fowls as animals." *Id*. at 690. The Court in *Brackett*, however, reached the opposite conclusion because its "legislature appears to have expressed its intent [for] the statute to cover[s] all animals." *Id*.

Thus, the *Brackett* decision stands for the proposition that although fowl are traditionally outside the scope of legislation protecting animals, the legislature reserves the right to manifest an intention for their inclusion. Accordingly, if the legislature expresses such an intent, as in *Brackett*, then it is reasonable for the judiciary to identify birds as animals for purposes of the statutory scheme.

Here, in accordance with the principles articulated above, while chickens are biologically animals, they are birds for statutory purposes. The Court is obliged to examine the statutory construction of 49 U.S.C. §80502 in order to determine if the legislature manifested an intent to

include fowl. The present statute, similar to the state anti-cruelty statutes considered in *Burford*, *Clairborne*, and *Stockton*, limits its statutory language to the term “animal”. Nowhere in the text of 49 U.S.C. §80502 is evidence of legislative intent to include fowl within the scope of traditional “beasts of the field.” *Clairborne*, 505 P.2d at 735.

The issue at hand is distinguishable from the situation in *Brackett*. 49 U.S.C. §80502, unlike the state anti-cruelty statute in *Brackett* , is void of an expressed intent of the federal government to include all animals, including chickens. The legislative history indicates that chickens are generally considered birds and are outside the scope of traditional notions of animals. Accordingly, the Court must reconcile that although chickens are biologically animals, this classification frustrates Congress’ statutory scheme to govern the interstate transport of traditional animals and not birds.

3. Canons of Statutory Construction Indicate that Congress Intended to Exclude Chickens from the Statutory Scheme of the Twenty-Eight Hour Law.

Applying the traditional canons of *noscitur a sociis* indicates that Congress did not intend to include chickens in the statutory scheme of the Twenty-Hour Law.

The doctrine of *noscitur a sociis* guides the Courts in interpreting a questionable meaning of a statutory term. In the present case, Congress’ use of the word “animal” in 49 U.S.C. §80502 is at issue. In applying *noscitur a sociis*, the Court is instructed to derive the meaning of the contested term by examining its association with other words listed in the statutory text. *Foster v Diphwys Casson* (1887) 18 QBD 428. The original version of the Twenty-Eight Hour Law explicitly stated its purpose was to govern the interstate "carrying or transporting cattle, sheep, swine, or other animals". 45 U.S.C.S.§ 71-74. Here, the term “other animals” must be interpreted

by its association with "cattle, sheep, and swine." Accordingly, birds fall outside the scope of traditional livestock that the statute seeks to govern.

Congress revised the Twenty-Eight Hour Law in 1994 by replacing the list of "cattle, sheep, swine, or other animals" with simply "animals." 49 U.S.C. §80502. This revision, however, was not intended to change the substantive meaning of the statute. Specifically, the Senate spoke to this revision in its Senate Report:

> To restate the laws related to transportation in one comprehensive title, it is necessary to make changes in language. Some of the changes are necessary to attain uniformity within the title. Others are necessary as the result of consolidating related provisions of law and to conform to common contemporary usage. In making changes in the language, precautions have been taken against making substantive changes in the law.

S. REP. NO. 103-265 (1994).

Accordingly, the substantive meaning of the Twenty-Eight Hour Law has not changed to include chickens.

4. Congress and Federal Courts Have Taken Care to Exclude Chickens from Federal Statutory Animal Protection Initiatives.

Congress has taken care to exclude chickens from federal statutory protection initiatives. In addition to the Twenty-Eight Hour Law, Congress has passed two significant animal protection laws, the Animal Welfare Act [AWA] and the Human Methods of Slaughter Act [HMSA]. Both the HMSA and the AWA explicitly exclude birds from their statutory protection. Each statute will be discussed in turn.

a. The Human Methods of Slaughter Act Excludes Birds from its Statutory Protection.

In 1958, Congress enacted the Humane Methods of Slaughter Act [HMSA] with the dual goal of "preventing the needless suffering" of livestock and thus creating "safer and better

working conditions" for those engaged in the slaughtering industry. 7 U.S.C.S. §1901.The HMSA governs the humane method of slaughtering with respect to certain types of animals. Specifically, the United States Department of Agriculture [USDA] explicitly includes "cattle, calves, horses, mules, sheep, swine, and other livestock." §1902(a). The USDA, however, took care to exclude poultry and equine from its statutory protection. §1904(1)-(2).

The United States District Court of the Northern District of California dealt with a challenge to the validity of the USDA's exclusion of poultry under the HMSA. *Levine v. Conner,* 540 F. Supp. 2d 1113 (N.D. C.A. 2008). On November 21, 2005 plaintiffs consisting of poultry eaters concerned about food-borne illnesses and organizations representing poultry slaughterhouse workers concerned about working conditions filed an action against the USDA for this exclusion. *Id*.

In response to plaintiffs' challenge, the USDA's Food Safety and Inspection Service issued a notice ["Notice"] on September 28, 2005 entitled "Treatment of Live Poultry Before Slaughter." *70 Fed. Reg. 56, 624.* The Court in *Levine* cites to this Notice to illustrate the federal government's position that it does not intend to promulgate a federal humane handling and slaughter act for poultry. *Id*. at 1114.

The Court in *Levine* examined the validity of the USDA's exclusion of poultry by employing "traditional tools of statutory construction" to determine whether the statutory scheme of HMSA was ambiguous or not. *Levine*, 540 F. Supp. at 1115. Accordingly, the Court examined the plain meaning of the statute, and its legislative history.

The Court began its inquiry by examining the statutory term "other livestock" to determine if the HMSA's exclusion of poultry was proper. The Court reasoned that the USDA's proffered definition of livestock as a category of animals including "horses, sheep, and other

useful animals kept of raised on a farm or ranch" implicitly excluded poultry. *Id*. at 1116. Similarly, the Twenty-Eight Hour Laws' original statutory term "other livestock" indicates Congress' intent to exclude poultry.

The Court then turned to an examination of legislative history. It noted that one year before the enactment of the HMSA, Congress enacted the PPIA, 21 U.S.C. §§451 *et seq.*, to provide a system governing the "inspection, processing, and regulation of poultry and poultry products." *Id*. at 1117. Accordingly, the Court reasoned that "The enactment of the PPIA and the HMSA by the same Congress, the 85th, suggests that Congress understood there to be a distinction between livestock and poultry." *Id*. Thus, the Court in *Levine* concluded that the "legislative history strongly demonstrated unambiguous Congressional intent that livestock, as used in the HMSA, does not include poultry." *Id*. at 1119. Similarly, this Court must infer from Congress' legislative history that by enacting a statute specifically designed for governing poultry, the PPIA, that chickens are outside the scope of its other statutes such as the HMSA and the Twenty-Eight Hour Law.

b. The Federal Animal Welfare Act Excludes Birds from its Protection.

In 1966 Congress enacted the Animal Welfare Act, 7 U.S.C. §2132, to improve the transportation, care, and handling of certain animals. Specifically, the Act requires the licensing of dealers and exhibitors, 7 U.S.C. §§2133-2134, and instructs the Secretary and any regulatory agency of the Federal Government which requires records to be maintained to promulgate standards for humane care of animals and recordkeeping of dealers, exhibitors, research facilities, intermediate handlers, and carriers, 7 U.S.C. §§2140, 2143.

The Act defines "animal" as follows:

> The term "animal" means any live or dead dog, cat, monkey (nonhuman primate mammal), guinea pig, hamster, rabbit, or such other warm-blooded animal, as the Secretary may determine is being used, or is intended for use, for research, testing, experimentation, or exhibition purposes, or as a pet…

7 U.S.C. §2132(g)

Four years later, Congress amended the act by making various exclusions. Currently, the Animal Welfare Act, 7 U.S.C. §2132(g) explicitly excludes:

> birds, rats of the genus Rattus, and mice of the genus Mus, bred for use in research, (2) horses not used for research purposes, and (3) other farm animals, such as, but not limited to livestock or poultry, used or intended for use as food or fiber, or livestock or poultry used or intended for use for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber.

Id.

In 1980, the United States Department of Agriculture re-examined its regulatory definition of animal and the above recently added exclusions, but chose to adhere to these exceptions. *Animal Legal Defense Fund v. Espy*, 23 F.3d 496, 498 (D.C. Circ. 1994).

Plaintiff organizations have raised unsuccessful claims challenging the validity of the Secretary of Agriculture's exclusion of birds, mice, and rats from its definition of "animal" as codified in 7 U.S.C.§ 2132(g). *Espy*, 23 F.3d at 498; *Alternatives Research & Development Foundation v. Glickman*, 101 F. Supp. 2d (D.C. Cir. 2000).

The United States Court of Appeals for the District of Columbia dismissed a plaintiff organization's claims that the Secretary's exclusion of certain species from its statutory definition of "animal" violated the Animal Welfare Act, 7 U.S.C. §2131, and its refusal to correct this regulation was unlawful. *Espy*, 23 F.3d at 497-498.The Court in *Espy* noted that the Secretary took deliberate steps to exclude certain species from statutory protection under 7 U.S.C. §2131. Specifically, the Court examined the history of the statute and noted that since the

Secretary's 1970 exclusion, it chose to adhere to it after a subsequent re-examination in the late 1980's. *Id*. at 498. Moreover, the Court noted that the Secretary purposely elected to exclude particular organisms when it stated: "The Department later removed aquatic animals from the exemption, 44 Fed. Reg. 36,868 (1979), and qualified the types of rats and mice exempted so that the regulation now excludes birds, rats of genus Rattus and mice of the genus." *Id*.

Ultimately, the plaintiff's suit against the Secretary of Agriculture was dismissed due to lack of standing. However, the decision rendered in *Espy* established the fact that the federal government clearly intended to exclude certain species from its animal protection initiatives, namely chickens. Accordingly, this Court should conclude that the federal government has maintained its position in excluding chickens from its statutory purview in its Twenty-Eight Hour Law.

POINT II

THE LOWER COURT CORRECTLY CONCLUDED THAT THE SUPREMACY CLAUSE OF THE U.S. CONSTITUTION DOES NOT BAR APPELLANTS CONVITION UNDER THE FLORIDINA ANTI-CRUELTY STATUTE WHEN THE FEDERAL "TWENTY-EIGHT HOUR LAW" DOES NOT PREEMPT FLORIDINA'S STATE ANTI-CRUELTY LAW.

A. Standard of Review.

Application of federal preemption doctrine is a question of law and is subject to de novo review. *Turner v. Perales*, 869 F. 2d 140, 141 (2d Cir. 1989).

B. There is a very strong presumption against preemption in areas historically regulated by the states pursuant to their police powers.

This court should affirm the lower court's holding that 49 U.S.C. § 80502 (2006), also known as the "Twenty-Eight Hour Law," does not preempt Floridina's state anti-cruelty statute.

8 Floridina Revised Statutes § 621. While the Supremacy Clause of the U.S. Constitution states that the "Laws of the United States…shall be the supreme law of the land," U.S. CONST. art. VI, cl. 2, it is well settled that there is a very strong presumption against finding Congressional intent to preempt, unless there is compelling evidence to demonstrate that it was the "clear and manifest purpose of Congress." *See Rice v. Santa Fe Elevator Corp.*, 331 us 218, 230 (1947); *accord Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *Jones v. Rath Packing Co.*, 430 U.S. 519, 525 (1977). Furthermore, such presumption is strongest when the state is exercising its authority to regulate matters traditionally within their police power, as Floridina was when enacting their anti-cruelty law. *See Hillsborough County v. Automated Med. Labs, Inc.*, 471 U.S. 707, 718-19 (1985). "The regulation of animals has long been recognized as part of the historic police power of the states." *DeHart v. Town of Austin, Ind.* 39 F. 3d 718, 722 (7th Cir. 1994) (quoting *Nicchia v New York*, 254 U.S. 228, 230-31 (1920)). *See also Kerr v. Kimmell*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing *Nicchia*).

Moreover, the party urging preemption has the burden of overcoming the presumption against it. *See Silkwood v. Kerr McGee Corp.*, 464 U.S. 238, 255 (1984). The burden is heaviest when the party urging preemption is relying on implied preemption, and such a finding is very rare. *Environmental Encapsulating Corp. v. City of New York*, 855 F. 2d 48, 58 (2d Cir. 1988). Even if the appellant's interpretation of the "Twenty-Eight Hour Law" implying preemptive intent was highly plausible, the court "would nevertheless have a duty to accept the reading that disfavors preemption. [The court has] long presumed that Congress does not cavalierly preempt state law causes of action." *See Bates v. Dow Agrosciences, LLC.*, 544 U.S. 431 (2005) (citing *Medtronic, Inc. v. Lohr*, 518 US 470, 485 (1996)). Therefore, the appellant in this case faces an uphill battle trying to urge this court to find implied preemption in the "Twenty-Eight Hour

Law." The lower court correctly found that the defendant did not successfully carry this burden, as they found against preemption.

C. There is no express preemption in the federal "Twenty-Eight Hour Law."

One way Congress can preempt state law is to include express provisions in their legislation informing the states not to legislate in the particular field at issue. If Congress chooses to include such provisions in their legislation, Congress has effectively preempted state law in that area. *Cipollone v. Liggett Group, Inc*., 505 U.S. 504, 516 (1992); *Rath Packing Co*., 430 U.S. at 525. Moreover, when Congress makes its preemptive intent known with express statutory language, the court's analysis is at end. *English v. General Electric Co*., 496 US 72, 78-79 (1990).

The statute at issue in the instant case, 49 U.S.C. § 80502 (2006), the "Twenty-Eight Hour Law," however, does not include any express language regarding a Congressional intent to preempt. Therefore, the lower court properly concluded that the doctrine of express preemption does not apply.

D. It is unreasonable to infer that Congress intended to occupy the field and preempt the states from legislating in this area.

The lower court correctly concluded that Congressional intent to occupy the field of regulation at issue could not be reasonably inferred from the statute and its context. Such intent to preempt the field may be inferred in two ways. The first situation is when Congress has legislated so pervasively in a particular field as to make reasonable the inference that Congress has left no room for the States to supplement it. *See Rice*, 331 U.S. at 230. (citing *Pennsylvania R. Co. v. Public Service Commission*, 250 U.S. 566, 569 (1919); *Cloverleaf Butter Co. v. Patterson*, 315 U.S. 786 (1942)). The second occurs when the federal law involves 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. *See Rice*, 331 U.S. at 230. (citing *Hines v. Davidowitz*, 312 U.S. 52, 61 (1941)). While the court ultimately will find an inference of field preemption where it is warranted it, it should be stressed that when the field of law at issue is one in which the states have traditionally regulated, the Congressional intent must be "clear and manifest." *Rath Packing Co*., 430 U.S. at 525. (quoting *Rice*, 331 U.S. at 230).

As established above, anti-cruelty legislation is a field of law in which the states have traditionally regulated. Therefore, in order for the court to find field preemption in the instant case, the intent of Congress to occupy the field must be clear and manifest. After analyzing both the extent to which Congress has regulated in and the nature of the field of law at issue, a clear and manifest intent of Congress to occupy the field cannot be supported. This is also supported by the language in the Purpose section of the title under which the "Twenty-Eight Hour Law" falls, 49 U.S.C. § 101 (b) (3) (2006), as the statute expressly "encourage[s] cooperation of federal, state, and local governments."

Furthermore, if the court did support a finding of Congressional intent to occupy the field, all state anti-cruelty laws would become invalid. That notion is directly adverse to the history of American anti-cruelty law. *See generally* David Favre and Vivien Tsang, *The Development of Anti-Cruelty laws During the 1800s*, 1993 Det. C. L. Rev. 1 (Spring 1993); R. 9. Federal intervention in the regulation of animal cruelty has always been minimal. *See DeHart*, 39 F. 3d at 722. Additionally, the importance of state regulation in matters regarding animal welfare has long been recognized. *Kerr*, 740 F. Supp. at 1529.

1. **The case *People v. Southern Pacific Co*. is not persuasive authority and is distinguishable from the instant case.**

The lower court was correct in rejecting the applicability of *People v. Southern Pacific Co*., 208 Cal. App. 2d 745 (1962), to the instant case. In *Southern Pacific Co*., the court held that Congress intended to occupy the entire field of regulating the treatment of livestock carried in interstate commerce, and therefore prosecution under a provision of the California Penal Code was preempted. While the court recognized the interest of the state in protecting animals within its borders from inhumane treatment through imposing and enforcing criminal sanctions, it nevertheless found that the interests of the state must yield to the national interest. The court appears to have based their conclusion on the fact that the federal act was detailed regarding maximum hours of confinement and minimum hours of rest, it provided for the amount and method of imposing a civil penalty, and conferred exclusive judicial jurisdiction upon the federal courts. *Id*. at 751-52.

While it seems as though the two cases are very similar, the two can be distinguished. First, it is the people's contention that birds are not even covered by the federal law. If birds are not covered by the federal law, then defendant-appellant isn't even subject to the federal law and the preemption issue becomes moot. No such argument was raised in *Southern Pacific Co*. Secondly, even if the federal statute applies to the appellant, it merely sets the minimum requirements for treatment during transportation, and the states are free to impose stricter standards so long as they do not create an undue burden on interstate commerce. *Cf. DeHart*, 39 F. 3d at 723.

Additionally, the court's reasoning in *Southern Pacific Co*. is flawed. The court found the statute at issue to be a single comprehensive scheme which by its natural operation amply assures uniform humane treatment of animals transported in interstate commerce. *Id*. at 752. At first glance, this may seem like a reasonable conclusion; however, in reality it is not. Without

allowing the state's to supplement the law and aid in enforcement efforts, there could be no such assurance of the humane treatment of animals in transport, and the goals of the statute would not be realized. The federal government does not have the resources to police every instance of livestock transportation in interstate commerce. If they were left to regulate the field on their own, thousands of violations would go undetected. Therefore, it seems unreasonable to infer that Congress intended to occupy a field which it clearly does not have the resources to police.

Moreover, several courts have issued holdings to the contrary. For example, the same statute has been held not to change the common law duty of the carrier with reference to the livestock, and the law is in place to create and ensure that minimum standards will be met. *See Lynn v. Mellon* 131 So. 458, 460 (Ala. Ct. App. 1930). Another court suggested that proof of compliance with the federal law can be a defense against enforcement actions but such proof is not absolutely conclusive. *See Hogg v. Louisville & N.R. Co*., 33 Ga. App. 773 (1925). This implies that a person can be subject to the federal law as well as other state laws, and that the federal law sets a minimum but the states can impose stricter regulations. Furthermore, as the lower court correctly noted, the appellant has provided no reason why the long standing balance between federal and state government in this area should be offset. R. 10.

E. The Floridina state anti-cruelty statute does not conflict with the federal "Twenty-Eight Hour Law."

The lower court properly found that conflict preemption does not apply to the instant case. State law can be preempted by federal law when there is a direct conflict between the two laws. State law presents an actual conflict with federal law when it is impossible for a private party to comply with both state and federal requirements. *Florida Lime & Avocado Growers, Inc. v.*

Paul, 373 U.S. 132, 142-43 (1963). *See also Freightliner Corp. v Myrick*, 514 U.S. 280, 287 (1995). (citing *English*, 496 U.S. at 79 and *Hines*, 312 U.S. at 67.) The court below reasoned that if the appellant were not in compliance with the federal law, he could simultaneously be sued by the federal government for violation of federal law while being prosecuted by Floridina for violation of their state law. R. 8. The court then concluded, properly, that conflict preemption did not apply. This conclusion is supported based on the language and nature of the two statutes, as nothing makes compliance with both state and federal law physically impossible.

F. The Floridina state anti-cruelty statute does not create an obstacle to the realization of the policies and purposes behind the "Twenty-Eight Hour Law."

The court below correctly found that the Floridina state anti-cruelty statute did not create an obstacle to the execution of the federal law sufficient to invoke preemption. State law can be preempted by federal law when state law stands as a barrier to carrying out the Congressional policies and purposes behind the law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 373 (2000). *See also Myrick*, 514 U.S. at 287. (citing *English*, 496 U.S. at 79, and *Hines*, 312 U.S. at 67.) Obstacle preemption can also exist when the policy effectuated by the state law produces a result inconsistent with the objective of the federal statue. *Hill v. State of Fla. ex rel. Watson*, 325 U.S. 538 (1945).

The circumstances of the instant case show that the Floridina law neither stands a barrier to nor produces a result inconsistent with the goals and objectives of the federal law. In fact, it is just the opposite. The court in *Humane Society of Rochester and Monroe County for Prevention of Cruelty to Animals, Inc., v. Lyng and Hertz*, 633 F. Supp. 480 (W.D.N.Y. 1986), stated that "it has long been the public policy of this country to avoid unnecessary cruelty to animals." This is

evidenced by the fact that all 50 states and the District of Columbia had adopted anti-cruelty laws by 1913. *Id.* The policy and objectives of both statutes at issue are the same—to ensure the humane treatment of and avoid unnecessary cruelty to animals. The court below found that there is a long history of state anti-cruelty doctrine standing alongside minimal federal legislation and nothing indicates that this sovereign partnership in animal protection has changed at any time. R. 9.

Furthermore, it has also been suggested that the federal statute serves to impose minimum standards for the treatment of livestock during transportation, and that the state is free to apply more stringent standards. The court in *Hillsborough* inferred that obstacle preemption cannot occur when the federal interest is to ensure a minimum standard. *Hillsborough*, 471 U.S. at 722. Moreover, it seems clear that both statutes work together to achieve the same goal of ensure humane treatment of animals and reducing unnecessary suffering. This further strengthens the lower court's ruling that there was no obstacle created by the Floridina law.

CONCLUSION

For the above stated reasons, we ask this court to reverse the District Court's ruling that the transport of chickens was covered by the federal "Twenty-Eight Hour Law" because the District Court improperly interpreted that chickens are "animals" within the scope of the "Twenty-Eight Hour Law. We also ask this court to affirm the District Court's ruling that the Supremacy Clause of the U.S. Constitution does not bar appellant's conviction under the Floridina state law when the federal law has no preemptive effect on the state law.