STATEMENT OF FACTS

Appellant Jeffrey Williams is the sole proprietor of Truckin' Chicken, a company that transports chickens trucks across state lines. (Mem. Op. at 1.) Mr. Williams collects so-called "spent hens" – chickens that can no longer lay eggs, have no market value, and would otherwise be thrown in dumpsters and left to die. *Id*. By collecting these chickens, Mr. Williams not only saves farms the cost of disposing of them and incurring fines, but he also reduces potential environmental and human health hazards created by their improper disposal. *Id*. at 1-2. Mr. Williams sells the chickens to the United States Department of Agriculture ("USDA") to be used for food in school lunch programs. *Id* at 1.

Mr. Williams' trips always traverse two states and never last longer than twenty-four hours. *Id.* at 2. Although the chickens receive no food, water, ventilation or veterinary care during the trips, and not all of them survive, his actions fully comply with the federal law that governs the transport of live animals, 49 U.S.C. § 80502 ("Twenty-Eight Hour Law"). (Mem. Op. at 2.)

Nonetheless, in 2008 a Floridina Highway Patrol Officer stopped Mr. Williams for a routine traffic violation while on his way to New York. *Id.* After finding some dead chickens in the truck, the officer contacted a local animal control officer who determined that the conditions described were a violation of Floridina's Cruelty to Animals Law. 8 Floridina Rev. Stat. § 621(a)-(d). Mr. Williams was arrested and subsequently charged under the state law. (Mem. Op. at 2.)

Mr. Williams did not deny the facts in the charging document, but maintained that the state was barred from prosecuting him since he had fully complied with federal standards, and thus his actions were humane as determined by the United States Congress. The State argued

that the state law is not federally preempted, and that even if it were preempted with respect to *other* animals, chickens are not "animals" within the coverage of the Twenty-Eight Hour Law. (*Id.* at 2-3.) The District Court agreed with Mr. Williams that the term "animals" as used in the Twenty-Eight Hour Law does include chickens, but held that the law does not bar prosecution under the state anti-cruelty law. (*Id.* at 3.)

Mr. Williams now appeals his conviction on the basis that the application of the Floridina state law violates the Supremacy Clause of the United States Constitution, and maintains that chickens are animals under the purview of the Twenty-Eight Hour Law.

ISSUES PRESENTED FOR REVIEW

1. Does the Twenty-Eight Hour Law, which governs interstate transport of animals, include chickens within its purview?
2. Does Congress' extensive commerce power, exercised through the Twenty-Eight Hour Law, preempt Floridina's Cruelty to Animals Law?

STANDARD OF REVIEW

Floridina courts of appeal have adopted the standard of review of the United States Court of Appeals for the Second Circuit. (Briefing Order at 2.) Both issues therefore require *de novo* review, since conclusions of law, including those involving constitutional questions, are reviewed *de novo*. *E.g.*, *In re Terrorist Bombings of U.S. Embassies in E. Afr.*, 549 F.3d 146, 188 (2d Cir. 2008). *U.S. v. Fell*, 531 F.3d 197, 209 (2d Cir. 2008).

SUMMARY OF THE LAW

The Twenty-Eight Hour Law was first enacted in 1873 by the 42nd Congress. Cruelty to Animals in Transit Act, ch. 252, 17 Stat. 584 (1873). The law referred to "cattle, sheep, swine and other animals." *Id.* The statute was later repealed and reenacted in 1906 by the 59th

Congress, which maintained that reference. (Substantive changes were made that are not relevant to this case.) Cruelty to Animals in Transit Act, ch. 3594, 34 Stat. 607 (1906). In 1994, the law was again repealed by the 103rd Congress, and reenacted and codified at 49 U.S.C. § 80502. The phrase "cattle, sheep, swine and other animals" was replaced with "animals." *Id.*

SUMMARY OF THE ARGUMENT

This Court must uphold the district court's ruling that the Twenty-Eight Hour Law applies to the transport of chickens, which are animals under any reasonable construction. Where a term is undefined, it must be interpreted according to its ordinary meaning unless the legislature has expressed a clear intent to the contrary. *See BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 91 (2006). Here, the plain and ordinary meaning of "animals" includes chickens. This meaning not only is consistent with legislative intent, but also furthers the goals sought by the drafters and accords with the principle that where Congress intends a narrow construction, it will so indicate. *Smith v. U.S*, 508 U.S. 223, 229 (1993).

The Court must further find federal preemption of the Floridina statute. Where federal law completely occupies the arena of transportation of animals in interstate commerce, and thus leaves no room for state supplementation, the state law must be preempted. *Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707, 713 (1985). Furthermore, when a state statute stands as an obstacle to the implementation of the full purpose of the federal law, it must also be preempted. *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 317 (1981). Here the Federal Twenty-Eight Hour Law is comprehensive and excludes state supplementation. Furthermore, the law is not simply a general statute for the humane treatment of animals in transportation, but a definitive codification of the compromise between animal welfare and the interests of the transportation industry.

ARGUMENT

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

Because the Twenty-Eight Hour Law does not explicitly define the word "animals," the court must look to other sources of statutory interpretation in order to determine whether chickens are included within the purview of the statute. It is a well-established rule of statutory construction that undefined words are interpreted in accordance with their ordinary and common meaning. *See, e.g., BP Am . Prod. Co.*, 549 U.S. at 91; *Smith v. United States*, 508 U.S. at 229. Absent a clearly expressed legislative intent to the contrary, a word's common meaning is ordinarily regarded as conclusive and in all but the most extraordinary circumstances, judicial inquiry ends. *See, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992); *North Dakota v. United States*, 460 U.S. 300, 312 (1983). Because the plain and ordinary meaning of animals includes chickens, and legislative intent is consistent with this meaning, this Court must uphold the district court's ruling that the Twenty-Eight Hour Law includes chickens.

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A. The Ordinary Meaning of the Word "Animal" Requires That Chickens Be Included Within the Coverage of the Twenty-Eight Hour Law.

Where a statutory term is not defined in the statute itself, as is the case here, the term is given its "ordinary" definition. *E.g.*, *Smith*, 508 U.S. at 229. In determining the ordinary meaning of a word, courts are "to follow the common practice of consulting dictionary definitions . . . and to look to how the terms were defined at the time the statute was adopted." *U.S. v. TRW Rifle*, 447 F.3d 686, 689 (9th Cir. 2006); *see also United States v. Santos*, 128 S.Ct. 2020, 2024 (2008) (citing Black's Law Dictionary and conventional dictionary-derived definitions to determine the meaning of undefined terms); *Smith*, 508 U.S. at 229 (same).

Conventional, scientific and legal dictionaries establish that the ordinary definition of animals includes chickens. *See Black's Law Dictionary* 96 (8th ed. 2004) (defining "animal" as

"[a]ny living creature other than a human being"); *Oxford American Dictionary and Language Guide* 35 (1999) (defining "animal" as "a living organism which feeds on organic matter, usually one with specialized sense organs and a nervous system, and able to respond rapidly to stimuli"); *Dictionary of Zoology, Oxford Reference Online* (2d ed. 1999) (http://www.oxfordreference.com/views/ENTRY.html?subview=Main&entry=t8.e1750) (classifying birds as members of the phylum *Chordata*, kingdom *Animalia*). Definitions from the period of the statute's original enactment are similarly broad. *See, e.g.*, *American Heritage Dictionary of the English Language* 49 (1864) (defining "animal" as "an organized body, endowed with life, sensation and the power of voluntary motion. . ."; *see also* Arthur Helps, *Some Talk About Animals and Their Masters* 53 (1875) ("When I use the word 'animals' I mean all living creatures except men and women.").[1]

State anti-cruelty statutes also define "animals" in a way that reflects the ordinary meaning of the word, either explicitly or implicitly including chickens. The majority of these statutes define animals as nonhuman vertebrates (though sometimes exclude fish). Margit Livingston, *Desecrating the Ark: Animal Abuse and the Law's Role in Prevention*, 87 Iowa L. Rev. 1, 31 (2001); *see, e.g.*, Idaho Code Ann. § 25-3502(2) (LexisNexis through 2008 Sess.); S.C. Code Ann. § 47-1-10(1) (West, Westlaw though 2008 Sess.). A number of statutes define animals broadly to include every living creature except humans, *e.g.*, Minn. Stat. § 343.20(2) (West, Westlaw through 2008 Sess.), Nev. Rev. Stat. 574.050(1) (LexisNexis through 2008 Sess.), while others employ a more limited definition that nonetheless includes birds. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-2910(H)(1) (West, Westlaw through 2008 Sess.) ("'[a]nimal' means a

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[1] Although some dictionaries cite alternative definitions that exclude birds, *e.g.*, *Webster's Third New International Dictionary, Unabridged* (1993) http://collections.chadwyck.com/home/home_mwd.jsp (search "quick search" for "animals"; then follow "animal [1, n]") ("a mammal as distinguished from a bird, reptile, or other nonmammal"), words are not necessarily made ambiguous by having alternative definitions. Rather, "alternative definitions are typically presented in the disjunctive," *TRW Rifle*, 447 F.3d at 690, giving credence to the notion that the *ordinary* meaning of animals includes birds.

mammal, bird, reptile or amphibian"); Wash. Rev. Code. Ann. § 16.52.011(2)(b) (West, Westlaw through 2008 legislation) (same). Chickens are included even under restrictive statutory definitions, which limit their coverage to domesticated animals and wild animals previously captured. *E.g* ., N.H. Rev. Stat. Ann. § 644:8(II) (West, Westlaw through 2008 Sess.).

While a small number of state courts found that chickens were not animals, these cases, in addition to having no precedential value, are inapplicable here. *See State v. Stockton*, 333 P.2d 735 (Ariz. 1953); *State v. Claiborne*, 505 P.2d 732 (Kan. 1973); *Lock v. Falkenstine*, 380 P.2d 278 (Okla. Crim. App. 1963). First, these cases dealt specifically with "gamecocks" used for sport, not domestic chickens used for food production. As the courts noted, cockfighting was considered an "age old sport . . . dignified by such participants as George Washington, Andrew Jackson . . .and Benjamin Franklin."[2] *Lock v. Falkenstine*, 380 P.2d at 280; *see also State v. Claiborne*, 505 P.2d at 733 (Kan. 1973) (also describing cockfighting as a sport enjoyed by many distinguished American figures). Transporting animals across interstate lines without food, water or rest holds no such historical cachet.

Furthermore, the courts in these cases were concerned that interpreting the statute at issue to proscribe cockfighting would render the particular statute vague and indefinite, and therefore unconstitutional. *See Stockton*, 333 P.2d at 736; *Claiborne*, 505 P.2d at 734-35; *Lock*, 380 P.2d at 281-82. Such concern is unwarranted with regards to the Twenty-Eight Hour Law because the conduct proscribed is sufficiently limited and clear. Moreover, any potential vagueness is remedied by restricting the statute's application to domestic or farm animals as effectively as to quadrupeds.

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Comment [GT1]: I really feel like I need some law to back this up – but I don't have time to research the whole unconstitutionally vague principal. Seems like the State would be making a pre-enforcement challenge, which is weird. Or I could just add a footnote saying the constitutionality of the law is beyond the scope of the brief since the State hasn't raised it.

[2] The courts in *Claiborne* and *Lock* went so far as to quote Abraham Lincoln: "'As long as the Almighty permitted intelligent men, created in his image and likeness, to fight in public and kill each other while the world looks on approvingly, it's not for me to deprive the chickens of the same privilege.'" *Claiborne*, 505 P.2d at 733; *Lock*, 380 P.2d at 280.

Finally, these cases are now moot since each of the states in which they were decided now contains a statutory definition of animals that clearly includes chickens. *See, e.g.*, Ariz. Rev. Stat. Ann. § 13-2910(H)(1) (West, Westlaw through 2008 Sess.) ("'[a]nimal" means a mammal, bird, reptile or amphibian"); Kan. Stat. Ann. § 21-4313(1) (West, Westlaw through 2007 Sess.) ("[a]nimal" means every living vertebrate except a human being"); Okla. Stat. Ann. tit. 21, §1680.1(1) (West, Westlaw through 2008 Sess.) (defining animals as "any mammal, bird, fish, reptile or invertebrate. . .").

The ordinary meaning of "animals" demands the inclusion of chickens. Dictionary and state statutory definitions demonstrate that chickens are animals under the most reasonable construction of the term. The only evidence counseling against this conclusion is outdated case law that does not apply to the instant case, and even then, state legislatures effectively abrogated the courts' rulings that chickens were not animals by subsequently enacting legislation that would include chickens under their anti-cruelty statutes.

B. Construing the Twenty-Eight Hour Law to Include Chickens is Consistent With the Statutory Scheme and Congressional Intent.

The common meaning of a term or statute prevails absent an indication that the legislature intended otherwise. *See, e.g.*, *Williams v. Taylor*, 529 U.S. 420, 431(2000); *see also Lamie v. U.S. Trustee*, 540 U.S. 526, 534 (2004) ("when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms"). There is no indication that those who drafted or revised the Twenty-Eight Hour Law intended to exclude chickens from the purview of the statute. In fact, including chickens within the statute's coverage not only is consistent with the language of the statute and congressional intent, but also furthers the legislative purpose.

1. *Construing the Term "Animals" to Include Chickens Serves the Statute's Legislative Purpose*.

The debates preceding the enactment of the original Twenty-Eight Hour Law evince two central goals: (1) to relieve unnecessary cruelty to slaughter-bound animals in transport to their destination of slaughter, and (2) to preserve the health and safety of transported animals for the benefit of prospective consumers. Congressman Flanagan summarized these goals aptly: "[t]here is the constitution of the animals that are to be transported on these cars and steamboats. Then there are the constitutions of the consumers, that ought to be looked to and preserved." Cong. Globe, 42nd Cong., 2d Sess. 4230 (1872). Congressman Wilson described the "cruelty, the barbarity, and the brutal inhumanity" suffered by animals in transit as "not only disgraceful to American civilization, but . . . detrimental to the health of the people of those cities who must eat the flesh of those animals." *Id.* 2367.

Including chickens within the purview of the Twenty-Eight Hour Law advances both these goals. Last year nine billion chickens were slaughtered in the United States and in 2006, annual per capita consumption of chicken reached 87.5 pounds, more than beef, pork, veal, or lamb. National Chicken Council, *Key Data of the Chicken Industry* (2008), http://www.nationalchickencouncil.com/statistics/stat_detail.cfm?id=32; USDA Economic Research Service, *Red Meat and Poultry - Per Capita Availability, Retail Weight* (2008), http://www.ers.usda.gov/Data/FoodConsumption/FoodAvailSpreadsheets.htm#mtredsu. Congress has officially recognized the significance of poultry as a source of food and subject of interstate commerce. The "Congressional statement of findings" under the Poultry and Poultry Products Inspection Act reads, "Poultry and poultry products are an important source of the Nation's total supply of food. They are consumed throughout the Nation and the major portion thereof moves in interstate or foreign commerce . . ." 21 U.S.C. § 451 (2008). In 1994, just weeks before it revised the

Twenty-Eight Hour Law, the 103rd Congress expressed concern regarding Canada's restrictions on imports of United States chickens, stating, "The United States chicken industry is a highly competitive and growing industry . . . United States exports of chickens grew by 32 percent in volume in 1993 and exports are increasingly important to the continued economic vitality of the chicken industry." 140 Cong. Rec. S7209 (1994). Excluding chickens from the purview of the Twenty-Eight Hour Law would grossly contravene the legislature's intent to protect animals that are subject to interstate transport and preserve the health of those who consume them.

2. *The Language of the Prior and Current Versions of the Statute Supports a Broad Construction of the Term "Animals."*

Contrary to the State's contention, the prior language of the law, which included reference to "cattle, sheep, or swine, or other animals," does not evince an intent to cover only quadrupeds. Rather, chickens were not among the animals enumerated in the prior versions of the statute because the development of the poultry industry took place only in the last century and only recently became a major commercial enterprise. *See* Afaf Al-Nassar et al., *Overview of Chicken Taxonomy and Domestication*, 63 World's Poultry Sci. J. 285, 290 (2007); James R. Gillespie, *Modern Livestock & Poultry Production* 6 (2003). In the past, chickens and other poultry were raised primarily on an individual family basis. Gillespie, *supra*, at 6. They were not the focus of congressional debate because the chicken "industry," or lack thereof, would have been largely unaffected by the statute's passage. Thus, the language used by the drafters simply reflects that cattle, sheep and swine, rather than chickens, were the primary subjects of interstate transport.[3] It no more justifies the exclusion of chickens than that of goats, which were not

[3] The term "livestock" appears frequently in the debates and committee reports preceding the 1906 enactment. *See, e.g.*, S. Rep. No. 59-975 (1906). "Livestock" is an ambiguous term that has been construed both to include and exclude poultry. *See Levine v. Conner*, 540 F. Supp. 2d 1113, 1117 (N.D. Cal. 2008) ("the plain meaning of the word livestock is ambiguous"); Federal Crop Insurance Act, 7 U.S.C. § 1523(b)(1) (2008) (defining livestock to include poultry); *but see* Packers and Stockyards Act, 7 U.S.C.A. § 182(4) (2008) (defining livestock as "cattle,

subjects of debate nor were they enumerated in the statute and yet would be included under the State's proffered definition.

That chickens are now major subjects of interstate transport in particular justifies their inclusion within the purview of the Twenty-Eight Hour Law, for it is a generally accepted canon of construction that statutes expressed in general terms apply prospectively to future subjects and conditions within their general scope. 2B Norman J. Singer & Shambie Singer, *Statutes and Statutory Construction* § 49:2 (7th ed. 2007); *see Smith v. Pan Air Corp.*, 684 F.2d 1102, 1113 (5th Cir. 1982) ("statutes are not confined in application to contemporary instances and . . . their principles are to be extended to embrace new factual situations and new technological developments"); *Cain v. Bowlby*, 114 F.2d 519, 522 (10th Cir. 1940) ("it is a general rule in the construction of statutes that legislative enactments in general and comprehensive terms, and prospective in operation, apply to persons, subjects and businesses within their general purview and scope, though coming into existence after their passage, where the language fairly includes them"). Thus, even if the drafters did not specifically contemplate the transport of chickens when enacting the Twenty-Eight Hour Law, their transport certainly constitutes a "subject" within the statute's "general scope" and thus warrants their inclusion now, particularly since excluding them would contravene the statutory goals as outlined above.

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The Supreme Court of Virginia affirmed that the language of the Twenty-Eight Hour law, even as written in 1873, was sufficiently general to cover any animals that might suffer from the proscribed conduct, not only those enumerated or even contemplated at the time of the statute's enactment. *Chesapeake & Ohio Ry. Co. v. Am. Exch. Bank*, 23 S.E. 935, 937 (Va. 1896)

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sheep, swine, horses, mules, or goats"). Because of the term's inconsistent treatment, its prevalence throughout the legislative history of the Twenty-Eight Hour Law cannot be taken to indicate an intention to exclude chickens. What *is* notable is that the 59th Congress, despite making numerous substantive revisions to the law, nonetheless left intact the language "other animals" rather than substituting "other livestock."

(hereinafter "*Chesapeake*"). In holding that the phrase "other animals" encompassed horses and mules, the court held that the law was intended to apply to "*all* animals which would suffer in like manner with cattle, sheep, and swine for want of food, water, or rest, while being shipped long distances . . ." *Id.* The court attributed the enumeration of "cattle, sheep, and swine" not to a ongressional intent to apply the law to quadrupeds, but rather to the fact that those animals were "more generally shipped upon cars than horses and mules." *Id.*[4] This reasoning applies equally, if not with more force, to chickens, since they far outnumber mules or horses.[5] Moreover, including chickens within the purview of the statute serves the intended purpose of protecting consumers.

Congress' substitution of the enumerated list for the general term "animals" in the 1994 enactment further contradicts the narrow construction proposed by the State. *See* 49 U.S.C. § 80502(a). Congress' stated purpose was "to eliminate unnecessary words." Pub.L. 103-272, § 7(b), July 5, 1994, 108 Stat. 1379. Nonetheless, Congress, fully cognizant of the significance of chickens in interstate transport, *see* 140 Cong. Rec. S7209, *supra*, chose a broad term, "animals," rather than a limited term such "quadrupeds" or "mammals," and did not include a proviso to exclude birds or fowl. A court must presume that Congress chose its words carefully and deliberately. *See, e.g.*, *FBI v. Abramson*, 456 U.S. 615, 635 (1982). Thus, had the 103rd Congress understood the Twenty-Eight Hour Law to apply only to quadrupeds, it would not have selected a term that could easily be construed to include chickens, nor would it have neglected to

[4] Appellant cites *Chesapeake* for the principal that the Twenty-Eight Hour Law applies broadly and is not confined to particular classes of animals; he disagrees with the court's conclusion that the statute is not a sanitary measure, 23 S.E. at 937, since congressional debates reveal that consumer health was of primary concern. The court's holding nonetheless supports appellant's argument that chickens should be included under the purview of the statute, since the essence of the holding is that the enumerated animals simply represented examples rather than a classification.

[5] As of 2005, there were 9.2 million horses in the United States. American Horse Council, *Horse Industry Statistics* (2008), http://www.horsecouncil.org/statistics.htm. In 2006, almost 9 billion chickens were slaughtered, a figure that does not even account for the number of live chickens. USDA National Agricultural Statistics Service, *Poultry Production and Value – 2007 Summary* 6 (2008), *available at* http://usda.mannlib.cornell.edu/MannUsda/view DocumentInfo.do?documentID=1130.

include an exception for birds or fowl. "Had Congress intended the narrow construction [the State] urges, it could have so indicated." *Smith*, 508 U.S. at 229 (declining to limit the meaning of the word "use" to "use for its intended purpose").

That Congress intended to include chickens within the purview of the Twenty-Eight Hour Law is further demonstrated by the fact that it has specifically excluded birds or poultry from other animal cruelty statutes. For example, the Animal Welfare Act, 7 U.S.C. sections 2131 *et seq.*, which governs the treatment of animals used for exhibition purposes, research or for sale as pets, specifically excludes farm animals, horses not used in research, and birds, rats, and mice used for research. *See id.* § 2132(g). Similarly, the Humane Methods Slaughter Act, 7 U.S.C. §§ 1901 *et seq.*, is explicit in its application to livestock, and the Federal Meat Inspection Act of 1907 ("FMIA") covers inspection of meat from "cattle, sheep, swine, goats, horses, mules, and other equines." 21 U.S.C. §§ 601 *et seq.*[6] The language of these statutes demonstrates that where Congress seeks to exclude birds or any other class of animals, it does so explicitly.

II. THE FEDERAL TWENTY-EIGHT HOUR LAW PREEMPTS FLORIDINA'S CRUELTY TO ANIMALS LAW.

Federal preemption of state laws derives from the Supremacy Clause of the United States Constitution. U.S. Const., art. VI. The Supremacy Clause, true to its name, holds that laws and treaties made pursuant to the Constitution are the supreme law of the nation, and that conflicting state laws are invalid. *See Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 108 (1992). Preemption can be implied, and is compelled whether Congress commands explicitly in the

[6] It is noteworthy that the FMIA was adopted less than one year after the same Congress, the 59th, adopted the revised version of the Twenty-Eight Hour Law, leaving intact the language "cattle, sheep, swine and other *animals*" despite volumes of hearings and several committee reports that resulted in substantial revisions to other parts of the statute. Law of June 29, 1906, ch. 3594, §§ 1-4, 34 Stat. 607 (repealed 1994) (emphasis added); *Proposed Amendment of the Twenty-Eight Hour Law Relating to the Transportation of Cattle: Hearings on H.B. 47, H.B. 145, H.B. 440, H.B. 10699, H.B. 12316, H.B. 12478, and H.B. 12615 Before the Comm. on Interstate and Foreign Commerce*, 59th Cong. (1906); H.R. Rep. No. 59-2661 (1906); H.R. Rep. No. 59-4938 (1906); S. Rep. No. 59-975 (1906).

language or implicitly in the regulation's structure and purpose. *Gade*, 505 U.S. at 98. There are two types of implied preemption: field and obstacle. *Id.* When dealing with implied preemption, courts must determine whether the state regulation is consistent with the structure and purpose of the statute as a whole. *Id.* Congress can even preempt laws that complement a federal regulation. *Hines v. Davidowitz*, 312 U.S. 52, 66-67 (1941).

The ultimate touchstone of preemption analysis is whether Congress intended to preempt state laws. *Cipollone v. Liggett Group, Inc.*, 505 US 504, 516 (1992). The court can discern this purpose from the language of the statute and its surrounding framework, as well as through the court's reasoned understanding of the way in which Congress intended the statute and its surrounding regulatory scheme to affect business, consumers, and the law. *Medtronic, Inc. v. Lohr*, 518 US 470, 485 (1996). While these statements provide some guidance on when the courts must find preemption, inevitably courts must base their decision upon whether the federal law's interests are best served by federal exclusivity in the subject area. Erwin Chemerinsky, *Constitutional Law* 402 (3d ed. 2006).

A. Williams' Business Is Part of Interstate Commerce

To understand the federal and state interests in Williams' case, it is important to determine whether his business is part of interstate commerce. Even though he did not purchase the 'spent hens,' his business is part of interstate commerce.

Congress can regulate the instrumentalities, persons, and things of interstate commerce. *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). Congress' commerce power, the purview of federal laws regulating commerce, extends to nonprofit enterprises. *Camps Newfound/Owatonna v. Town of Harrison*, 520 U.S. 564, 584 (1997).

In *Camps Newfound*, the Court found that a Maine law giving tax exemptions to charities violated the Commerce Clause as it discriminated against a nonprofit camp. Thus, Congress could permissibly regulate even non-profit enterprises. *Id*.

Williams' Truckin' Chicken business is more clearly constitutionally regulated than that in *Camps Newfound*. Unlike in *Camps Newfound*, Williams' business is for-profit. While Williams does not purchase the spent hens, he does sell these animals in various states after transporting his them. Comparatively speaking, simple logic leads to the conclusion that a non-profit local camp is far more likely to fall outside the purview of Congress' commerce power than a for-profit interstate trucking company selling products in numerous states. As Congress' expansive powers in this area extend to the former, the latter's inclusion in such Congressional power is not in doubt. Even were this not so, the exclusion of an activity from interstate commerce simply because one end of the transaction is not completed in a monetary exchange would cast doubt on Congress' power to regulate the vastly expanding service industries. Surely, such a result would be out of line with even the Court's more recent hemming of Congress' commerce power. *See United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995).

Williams' business is within Congress' commerce power. It is economic activity within interstate commerce.

B. Preemption Is More Likely To Be Found in Areas of Dominant Federal Concern, Including Regulation of Interstate Commerce.

The court should be especially amenable to finding federal preemption in Williams' case because the federal interest in regulating interstate commerce is dominant.

Because Williams' business is within Congress' powers to regulate interstate commerce, the business falls within an area where the federal government plays a unique and dominant role.

See Gibbons v. Ogden, 22 U.S. 1, 76 (1824) (power over commerce "is vested in Congress as absolutely as it would be in a single government"). Where the government has a dominant interest, it is easier to find preemption. *See*, *e.g*,. *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Hines*, 312 U.S. 52. The regulation of interstate commerce is such an area. *Chi. & N. W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311, 318 (1981) ("there can be no divided authority over interstate commerce, and the acts of Congress on that subject are supreme and exclusive."). Efforts to regulate interstate commerce must fail when they conflict with or interfere with federal authority over the same activity, *id*. at 319, even if such state laws are consistent with the federal regulation. *See Hodel v. Va. Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 290 (1981).

In *Hines*, Congress acted in an area of dominant federal interest and preempted state regulation. There, the Federal Alien Registration Act, 54 Stat. 670 (1940), preempted a state statute requiring registration for immigrants. *Hines*, 312 U.S. at 74. The Court found it important that the field required a federal power that be left free from local interference. *Id*. at 63.

In *Reid v. Colorado*, 187 U.S. 137 (1902), the Court found that transportation of livestock among the states was part of interstate commerce, but a state law concerning the suppression of disease among livestock was not preempted by a federal law related to that subject. This was because the two laws did not "cover the same ground." *Id*. at 150. The federal law explicitly allowed for state involvement in the area and concerned transport to foreign countries and investigations and fact finding on how to deal with the problem. *Id*. at 143-44. This was not a case where the entire subject of transportation of livestock in interstate commerce was covered by a federal statute. *Id*. at 149.

The present case shares many similarities with *Hines*. 312 U.S. 52. First, both deal with areas of dominant federal concern. While foreign relations may be more paradigmatically federal, interstate commerce is similar in that the federal government is uniquely able to act. No state is able to create national standards through legislation, just as no state is able to speak for the nation in regards to foreign relations. Second, both state laws at issue complement an objective of the federal law, and both federal laws do not contain express preemptive language. All factors call for preemption in this case.

The current case is also distinguishable from *Reid*. 187 U.S. 137. In this case, the two laws cover the same area, namely how long an animal can be continuously held in transport without food, water, or rest. The laws in *Reid* did not cover the same area, and the state was merely adding a regulation in the absence of Congressional legislation on that particular issue. *Id*. at 147-48. Furthermore, the Twenty-Eight Hour Law, unlike the law at issue in *Reid*, does not expressly allow for state involvement, and covers the entire field of transportation of animals in interstate commerce. *Id*. This case is especially pertinent as it shows that Congress can competently include state involvement in animal welfare regulations. The fact that Congress did not use this expertise in this law is illuminating; if Congress had desired state involvement, it was well aware of how to accomplish this objective. *See, e.g.*, *W. Va. Univ. Hosps. v. Casey*, 499 U.S. 83 (1991) (holding that Congressional competence to achieve an end in one area can mean that absence in another is dispositive). Thus, Williams' case is far more amenable to preemption.

Williams' case falls into an area of dominant federal interest, so the court should, as in *Hines*, be cautious not to hinder the federal government's interests in this area, and should be more amenable to a finding of preemption.

C. The Twenty-Eight Hour Law Is Complete, Leaves No Room For State Supplementation and Thus Preempts Floridina's Statute Under Field Preemption.

Field preemption exists if a federal regulation is broad enough that the court can impliedly find that Congress left no room for state regulation. *Hillsborough County v. Automated Med. Labs, Inc.*, 471 U.S. 707, 713 (1985). Field preemption does not depend upon Congress expressly stating that the federal regulation is complete. *Bethlehem Steel Co. v. New York State Labor Relations Bd.*, 330 U.S. 767 (1947). Again, there are no clear delineating lines for deciding whether a federal regulation is comprehensive enough to preempt in its field, but several cases show that the Twenty-Eight Hour Law is more comprehensive than other statutes which have been found to comprehensively regulate a field.

In *People v. Southern Pacific Co.*, 208 Cal. App. 2d 745 (1962), the California Court of Appeals stated that a California law was preempted by the Federal Twenty-Eight Hour Law. The California court found that the local law

> prohibits cruelty to animals generally, in various enumerated forms, and makes violation a crime. It is not directed at interstate commerce but lays its hand upon "Every person." This broad language embraces the carrier, its officials, agents and employees. The statute does not spell out what constitutes cruelty by withholding from animals food, water, shelter or protection from the weather. No particular standard of conduct is set up; this is a matter is left to the trier of fact. *Id.* at 750.

Thus, the law applied to interstate shippers. *Id.* The California court found preemption because the Federal Act, by the detailed nature of its framing, inexorably led to the conclusion that Congress intended the act to occupy the entire field of regulation of livestock in interstate commerce. *Id.* at 752.

In *Nelson*, 350 U.S. 497, the Court found a state sedition law to be preempted. The Federal Smith Act, 18 U.S.C.A. § 2385, contained no express preemptive language and there was no conflict between the federal and state sedition statute. *Nelson*, 350 U.S. 497. Congress did not express intent to preempt state laws on the matter. *Id*. at 502. Nevertheless, the Court found field preemption because of the comprehensiveness of the federal regulation. *Id*. at 504. Important to the Court was the fact that the act described the offenses, provided for punishment and was only supplemented with two other statutes. *See id*. at 502-04.

In *Dehart v. Town of Austin*, 39 F.3d 718 (1994), the Court of Appeals for the Seventh Circuit held that a local ordinance was not preempted by the AWA. 7 U.S.C. §§ 2131 *et. seq*. This was because the law was not comprehensive as it allowed cooperation with local authorities in perpetuating standards for its implementation. *See* Dehart, 39 F.3d at 722. States were also expressly allowed to cooperate in carrying out the statute's purpose. *Id*.

In *Hillsborough County*, the Court found that a local county law dealing with blood plasma was not preempted. 471 U.S. at 707. This was because the increase in breadth of the federal regulations did not alter the earlier federal statement that the regulations were not intended to preempt state action. *Id*. at 716-17. Furthermore, the federal laws at issue in *Hillsborough* were administrative regulations and not Congressional statutes, and thus less likely to be preemptive. *Id*. at 717.

Furthermore, the lower court in Williams' case made a number of erroneous statements concerning field preemption. First, the court stated that a broad application of field preemption here would eliminate state regulation of animal cruelty. This case does not concern the application of Floridina's law to all animal cruelty, but to the more restrained question of its application to interstate commerce. Williams contends that the court should preempt Floridina's

law only to the extent covered by the federal regulation; a well established standard that local laws may be preempted only in part. *See Gade*, 505 U.S. 109. Second, the lower court stated that Williams ignores the fact that animal cruelty has traditionally been a local matter. But again, Williams' argument does not seek to infringe upon this traditional state power; this case only extends to interstate transportation. This case does not concern the regulation of animals before entering interstate commerce or after they have left for market, but covers the enforcement of a state regulation over the physical transportation of commodities in interstate commerce. Nothing in a preemption finding would curtail the power of states in their traditional spheres. Rather, such finding would allow the federal government to act and effectuate the limited and enumerated powers granted under the United States Constitution.

Third, the cases the lower court cites for the proposition that this is an area of traditional state concern, *Kerr v. Kimmell*, 740 F. Supp. 1525 (D. Kan. 1990) and *Cresenzi Bird Importers, Inc. v. State*, 658 F. Supp. 1441 (S.D.N.Y. 1987), are not only not controlling, they are also inapplicable. *Kerr* concerned regulation of local activities with incidental effects upon interstate commerce, while the present case deals with a state statute directly regulating this federal concern. 740 F. Supp. 1525. Moreover, the federal law in *Kerr*, explicitly allowed for state regulation in the area. *Id.* at 1529. *Cresenzi* was also a case where the federal law explicitly allowed states to supplement the federal regulation. 659 F. Supp at 1445. Neither establishes a local concern over interstate commerce, and neither deals with a federal statute without clear intent to allow state supplementation.

Fourth, the lower court rejected the reasoning of the Court of Appeals for California in a remarkably similar case as 'distinguishable' in both facts and law. *See People v. Southern Pacific Co.* The lower court was within its power to make this decision, but its reasoning was

perfunctory and flawed. *See id*. The California law and Floridina law share many similarities. In fact, the California court's quotation above concerning the state cruelty statute is equally applicable here without reservation. The dispositive facets of the California law are present in this case as well. The significant similarities between the California and Floridina laws calls for the same result. In both cases the defendants were charged with a crime under a local law after violating a provision requiring food, water and rest for animals. The animals in both cases were still in interstate commerce and had not reached their final destination. For all these remarkable similarities, it is surprising the lower court dismissed the case without more justification.

The cases which the lower court used to buttress this dismissal are inapt and deal with entirely different matters. *See Lynn v. Mellon*, 24 Ala. App. 144 (1930); *Hogg v. Louisville & N.R. Co.*, 33 Ga. App. 773 (1925). These cases concerned the common law duty in civil law due to the owner of animals, and are not concerned with animal welfare. *Lynn*, 24 Ala. App 144, *Hogg*, 33 Ga. App. Allowing preemption in this case in no way upsets 'the balance' of which the lower court refers. It does no more than the *Lynn* and *Hogg* courts; it supplies a federal criminal provision which may influence lower courts' common-law civil requirements.

Should this court follow the district court's unprincipled example and disregard the California case's reasoning, other cases are sufficiently similar to justify field preemption. Both *Nelson* and the present case deal with statutes with no express preemptive language and no direct conflict between the federal and state laws. Both laws describe the offenses and provide means for punishment. The matter is even clearer here, because in *Nelson*, three statutes dealt with the matter of sedition. With regards to the Twenty-Eight Hour Law, Congress contained the whole subject in one comprehensive statute. Furthermore, the Federal Twenty-Eight Hour Law is categorical, providing definitive requirements. Even the subject matter under the current case is

more limited, dealing with transportation of animals, while a prohibition on sedition covers a far greater level of conduct. Sedition can take many forms[7] while transportation is more limited. Furthermore, this is not a case such as *Dehart*, with general provisions left open to the interpretation of states or federal agencies to create standards. It is also not a statute which expressly assumes state involvement in setting standards. This case is also distinguishable from *Hillsborough*, where the federal laws were administrative regulations, and thus less open to preemption, as well as the fact that here there is no federal statement that the law was not intended to preempt state action.

This case is a prime example of field preemption for congressional statutes, not only because another court has directly ruled in the affirmative on this matter, but also because the law here is more complete than other laws deemed to be comprehensive enough to demonstrate field preemption.

D. Floridina's Cruelty to Animals Law Stands as an Obstacle To The Purpose of the Twenty-Eight Hour Law as a Compromise Between Animal Welfare and the Interests of the Transportation Industry.

The other applicable form of federal preemption is obstacle preemption. Obstacle preemption exists if the state law stands as a barrier or obstacle in the way of the achievement and execution of the *full* purposes and objectives of Congress. *Chi. & N. W. Transp. Co.*, 450 U.S. at 317. Determining whether the state law stands as an obstacle to the full enforcement of the federal law's purposes is a two-step process. *Id.* First, the court ascertains the purposes of the statutes. It then determines whether they are in conflict, not just in writing, but in enforcement. *Jones v. Rath Packing Co.*, 430 U.S. 519, 526 (1977). This conflict is concerned

[7] The first definition of sedition the Smith Act provides: "Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; " obviously covers a great deal of actions.

with the nature of the activities regulated. The Court has used many different techniques for discovering Congressional intent ranging from textual analysis, use of legislative history, and purposive approaches, and all can be helpful in determining Congressional intent.

In *Pacific Gas & Electric v. State Energy Resources Conservation & Development Commission*, the Court found that a federal law did not preempt a state law on the same subject. 461 U.S. 190 (1983) (hereinafter "*PG&E*"). The federal law, the Atomic Energy Act ("AEA"), encouraged the development of nuclear reactors for electrical power. The state law imposed a moratorium on the construction of new nuclear power plants until the state determined a safe manner in which to dispose of nuclear waste. *Id*. at 198. The federal law did not preempt the state regulation despite a rather transparent purpose of the AEA to promote nuclear power. *See id*. This was because the Court found that while the *primary* purpose of the AEA was to promote nuclear power, the act was not an unbridled measure to advance nuclear power, but bound by economic feasibility. *Id*. at 206. This ruling came despite the stated purpose in the AEA that the act was for the "development, use, and control of atomic energy [which] shall be directed so as to make the maximum contribution to the general welfare." 42 U.S.C. § 2011. This statement was only couched behind the paramount objective of promoting defense and security. Furthermore, the AEA did not preempt the state measure because the state measure went to economic considerations, while the federal law was to ensure safety. *PG&E*, 461 U.S. at 207-208.

In *Gade*, 505 U.S. at 105, the Court found obstacle preemption of a state law which regulated in conjunction with the federal standards under the Occupational Safety and Health Act ("OSHA"). Congress allowed states under OSHA to replace federal regulations if approved by the federal government. *Id*. at 103-04. This demonstrated that Congress wanted only one set of

occupational safety and health standards. *Id.* at 99. Thus, despite the fact that the state regulations served the same purpose as the federal laws, this was insufficient to prevent preemption.

The current case shares many similarities with *Gade*, and important, if only partial, similarities with *PG&E*. First, as regards *Gade*, both state laws serve at least one of the purposes of the federal statutes. Moreover, the same motivation in *Gade*, uniformity, cautions for one set of laws in the present case. In *Gade* this meant that a business would have to comply with only one set of occupational safety laws. For Williams, his business operates in interstate commerce. For only one set of laws to apply to his actions, this would require an interstate solution, something solely possible through the federal government. Williams' case more clearly calls for preemption than in *Gade*, as there is clearer evidence of Congressional intent for the Twenty-Eight Hour Law to be exclusive than in *Gade*.

Furthermore, Congress disregarded an amendment which would have limited the application of the Twenty-Eight Hour Law to states without a law on the humane transportation of animals. *See* Cong. Globe, 42nd Cong., 2d Sess. 4226-27 (1872). In response to this proposed amendment, Senator Frelinghuysen stated that the amendment would "destroy the act" by infringing upon its national character. *Id.* 4227. The unmistakable conclusion is that Congress considered the national character and uniformity of the act, and passed a law to serve these interests. In *Gade*, meanwhile, the Court discerned intent for application of only one set of laws from the design of a statute which allowed for state involvement in the regulation making process. The Twenty-Eight Hour Law is far clearer; it does not include avenues for state involvement, and members of Congress made direct statements that the law was intended to serve as a national standard.

Even were this not so, and Congress did not intend for the law to serve as a national standard, *PG&E* provides support for preemption. The *PG&E* Court's finding that the AEA had an imbedded purpose beyond the explicit textual statement gives credence to the construction of the Twenty-Eight Hour Law as more than an unmitigated law advancing animal welfare. Congress' purpose in passing this statute was not simply a desire to aid animals in transportation. The text of the law makes this abundantly clear; animals can be kept in transit without any food, water, or rest for 28 hours. This number does not appear to have any clear unmistakable significance, rather it is a compromise position between animal welfare and the interests of the transportation industry. In fact, a federal circuit court stated just this in *United States v. Oregon R. & Nav. Co.*, 163 F. 640, 641 (C.C.D. Or. 1908) when it stated, "the law simply subserves the two purposes of its enactment; that is, to insure humane treatment of animals while in transportation, and to subserve the interests of the owner or shipper as far as possible in consonance with such treatment." Moreover, in a 1906 Committee Report on the reenactment of the law, Congress stated that the changes and passage of the law were intended to promote animal welfare, but also the interests of the transportation industry. S. Rep. No. 59-975 (1906).

This does not necessarily mean that the court cases holding that the statute is for animal welfare and restrictive of transporters' rights are wrong, *see, e.g,. Baltimore & O. S. R. Co. v. United States*, 220 U.S. 94 (1911), but rather that these courts have only looked to one aspect of the law. This is not a law, e.g. the AWA, with general provisions. Even the lower court agreed with this point when saying that Congress has set an absolute limit in the Twenty-Eight Hour Law. The compromise created an absolute limit, and Floridina's law would stand as an obstacle to the full enforcement of this compromise.

Even the defense made in *PG&E* that there is an alternative motivation for the state statute which would preclude preemption is not applicable. The Floridina statute is by its very name a measure to prevent cruelty, no other motivation is immediately apparent. Because it is enforced in this case over exactly the same ground as the federal law, and is solely for one of the purposes of the Twenty-Eight Hour Law, it must be preempted.

CONCLUSION

This Court must dismiss the case against Mr. Williams. The federal law preempts the Floridina statute under the doctrine of 'field preemption' and alternatively 'obstacle preemption.' Furthermore, the Floridina statute is especially prone to preemption because its application touches a dominant federal interest, regulation of interstate commerce. Congress left no room for Floridina's supplementation; the federal law is categorical and speaks with definitiveness. The Floridina statute's application in this case stands as an obstacle to the purpose of the federal law. The law is not simply a general statute for the humane treatment of animals in transportation, but a definitive codification of the compromise between animal welfare and the interests of the transportation industry. Allowing the Floridina statute to apply to interstate commerce would upset the national character of the Twenty-Eight Hour Law and its ongoing compromise.

Contrary to the State's contention, the Twenty-Eight Hour Law is also preempted with respect to Mr. Williams' conduct because chickens are "animals" within the coverage of the law. To hold that the law applies only to quadrupeds contradicts the plain meaning of the word "animals" and grossly contravenes the legislative purpose: to protect animals subject to interstate transport and preserve the health of those who consume them. Therefore, this Court must reject the narrow construction advocated by the State and uphold the finding that the Twenty-Eight Hour Law applies to chickens.