

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

Cr. No. 08-1028

THE PEOPLE,

Respondent/Cross-Appellant,

v.

JEFFREY WILLIAMS,

Appellant/Cross-Respondent.

On Appeal to the Floridina State Court of Appeals, Division Three, from
the Floridina State Court for the District of Stinsonia
Presiding Judge: Hon. Matthew H. Pan

BRIEF FOR APPELLANT/CROSS-RESPONDENT JEFFREY WILLIAMS

Moot Court Team No. 7

ATTORNEYS FOR APPELLANT/CROSS-
RESPONDENT
JEFFREY WILLIAMS

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STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. art. VI, cl. 2:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the authority of the United States, shall be the supreme Law of the land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

U.S. Const. art. 1, § 8, cl. 3:

The Congress shall have power . . . To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

7 U.S.C. § 1901 (2006): Findings and declaration of policy.

The Congress finds that the use of humane methods in the slaughter of livestock prevents needless suffering; results in safer and better working conditions for persons engaged in the slaughtering industry; brings about improvement of products and economies in slaughtering operations; and produces other benefits for producers, processors, and consumers which tend to expedite an orderly flow of livestock and livestock products in interstate and foreign commerce. It is therefore declared to be the policy of the United States that the slaughtering of livestock and the handling of livestock in connection with slaughter shall be carried out only by humane methods.

7 U.S.C. § 2131 (2006): Congressional statement of policy.

The Congress finds that animals and activities which are regulated under this chapter are either in interstate or foreign commerce or substantially affect such commerce or the free flow thereof, and that regulation of animals and activities as provided in this chapter is necessary to prevent and eliminate burdens upon such commerce and to effectively regulate such commerce, in order—(1) to insure that animals intended for use in research facilities or for exhibition purposes or for use as pets are provided humane care and treatment; (2) to assure the humane

treatment of animals during transportation in commerce; and (3) to protect the owners of animals from the theft of their animals by preventing the sale or use of animals which have been stolen. The Congress further finds that it is essential to regulate, as provided in this chapter, the transportation, purchase, sale, housing, care, handling, and treatment of animals by carriers or by persons or organizations engaged in using them for research or experimental purposes or for exhibition purposes or holding them for sale as pets or for any such purpose or use.

7 U.S.C. § 2132(g) (2006): Definitions.

When used in this chapter-- (g) 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; but such term excludes (1) 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 for improving animal nutrition, breeding, management, or production efficiency, or for improving the quality of food or fiber. With respect to a dog, the term means all dogs including those used for hunting, security, or breeding purposes.

49 U.S.C. § 80502 (1994):

(a) Confinement.--(1) Except as provided in this section, a rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel transporting animals from a place in a State, the District of Columbia, or a territory or possession of the United States through or to a place in another State, the District of Columbia, or a territory or possession, may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water, and rest. (2) Sheep may be confined for an additional 8 consecutive hours without being unloaded when the 28-hour period of confinement ends at night. Animals may be confined for-- (A) more than 28 hours when the animals cannot be unloaded because of accidental or unavoidable causes that could not have been anticipated or avoided when being careful; and (B) 36 consecutive hours when the owner or person having custody of animals being transported requests, in writing and separate from a bill of lading or other rail form, that the 28-hour period be extended to 36 hours. (3) Time spent in loading and unloading animals is not included as part of a period of confinement under this subsection. (b) Unloading, feeding, watering, and rest.--Animals being transported shall be unloaded in a humane way into pens equipped for feeding, water, and rest for at least 5 consecutive hours. The owner or person having custody of the animals shall feed

and water the animals. When the animals are not fed and watered by the owner or person having custody, the rail carrier, express carrier, or common carrier (except by air or water), the receiver, trustee, or lessee of one of those carriers, or the owner or master of a vessel transporting the animals-- (1) shall feed and water the animals at the reasonable expense of the owner or person having custody, except that the owner or shipper may provide food; (2) has a lien on the animals for providing food, care, and custody that may be collected at the destination in the same way that a transportation charge is collected; and (3) is not liable for detaining the animals for a reasonable period to comply with subsection (a) of this section. (c) Nonapplication.--This section does not apply when animals are transported in a vehicle or vessel in which the animals have food, water, space, and an opportunity for rest. (d) Civil penalty.--A rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel that knowingly and willfully violates this section is liable to the United States Government for a civil penalty of at least \$100 but not more than \$500 for each violation. On learning of a violation, the Attorney General shall bring a civil action to collect the penalty in the district court of the United States for the judicial district in which the violation occurred or the defendant resides or does business.

8 Florida Revised Statutes § 621:

“Animal cruelty” is committed by every person who directly or indirectly causes any animal to be (a) overdriven, overworked, tortured, or tormented; (b) deprived of necessary sustenance, drink, shelter or protection from the weather; (c) denied of adequate exercise, room to lie down, or room to spread limbs, or (d) abused.

STATEMENT OF THE ISSUES

1. Are chickens protected as “animals” under the regulations of the Twenty-Eight Hour Law?

2. If so, does the U.S. Constitution’s Supremacy Clause bar a conviction under a Florida anti-cruelty statute if that state statute is preempted by the federal Twenty-Eight Hour Law?

STATEMENT OF THE FACTS

Appellant/Cross-Respondent Jeffrey Williams, an entrepreneur and owner of Truckin Chicken, had this action commenced against him by the Respondent/Cross-Appellant State of Florida for an alleged violation of Florida's Cruelty to Animals Law. Order at 2. Mr. Williams raises the sole argument that his conduct complies with 49 U.S.C. § 80502, commonly known as the Twenty-Eight Hour Law, and that this federal statute preempts Florida's Cruelty to Animals Law, 8 Florida Revised Statutes ("FRS") § 621, subsections (a) – (d). The State of Florida Court, for the District of Stinsonia found Mr. Williams guilty of forty-five counts of animal cruelty, ruling that although a chicken is an "animal" under the Twenty-Eight Hour Law, the Twenty-Eight Hour Law did not preempt the Florida Cruelty to Animals Law. Mr. Williams appealed to the State of Florida Court of Appeals, Division Three, asserting he was subject only to the Twenty-Eight Hour Law and that his conviction should be overturned and his indictment dismissed because application of the anti-cruelty law violates the Supremacy Clause of the United States Constitution. Order at 1.

Mr. Williams's business, Truckin Chicken, removes hens from chicken farms once they have finished laying eggs, and sells the chickens, called "spent hens", to the United States Department of Agriculture ("USDA"). The USDA then provides the spent hens for food in school lunch programs. Order at 1.

Mr. Williams recognized a business opportunity utilizing the spent hens that are worthless to the chicken farmer once they have ceased laying eggs. Instead of discarding the chickens into dumpsters like other industrial trash, farmers are now able to contact Mr. Williams removes the hens and transports them for use in school lunch programs at

no charge. Mr. Williams saves the hens from a likely prolonged death of suffocation, dehydration, or starvation in the bottom of a dumpster wherein they are left to rot, and instead transports the hens to a factory where they are quickly put to an end and allowed a beneficial use as food for America's school children. Mr. Williams's business also alleviates environmental and human health hazards created by the tens of thousands of spent hens disposed of each month across the nation. Mr. Williams receives no pay from the chicken farmers for his beneficial removal efforts. Order at 2.

Mr. Williams moves approximately ten-thousand hens per run in the back of a tractor-trailer truck. His trips always traverse at least two states. Order at 2. Although the hens do not receive food, water, or veterinary care while on Mr. Williams tractor-trailer, none of his drives lasts longer than twenty-four hours – a time period well within the Twenty-Eight Hour Law window for what Congress has deemed a humane period of time for animals to be without such items. Mr. Williams never stops on his drives, moving the hens as quickly as possible to their destination. Upon arrival at their destination, approximately fifteen percent of the hens are unable to survive the transit. Order at 2.

While traveling from Florida to New York in 2008, a Florida Highway Patrol officer stopped Mr. Williams because one of the taillights on his truck was out. Order at 2. The Patrol officer found a large number of dead chickens, live chickens standing on top of dead chickens, and chickens that appeared unable to stand upright in the back of Mr. Williams's truck. Order at 2. The Patrol officer notified a local animal control officer, who confirmed the reported conditions were a violation of Florida's Cruelty to Animals Law. Although Mr. Williams followed federal guidelines for animal care while his tractor-trailer truck traversed several states in interstate commerce, he was arrested for

a violation of Florida state law, and charged with forty-five counts of animal cruelty under such law.

Mr. Williams has appealed his case to the State of Florida Court of Appeals, Division Three, asserting that he was subject to the federal Twenty-Eight Hour Law, not the Florida state law, because the Twenty-Eight Hour Law preempts the state law, and therefore his conviction should be overturned and his indictment dismissed. To overturn Mr. Williams's conviction and dismiss his indictment, the State of Florida Court of Appeals, Division Three, requires two questions to be answered in the affirmative. First, does the term "animals" in the Twenty-Eight Hour Law include chickens? Second, does the Supremacy Clause of the U.S. Constitution bar Mr. Williams's conviction under the Florida anti-cruelty statute because the state anti-cruelty law is preempted by the federal Twenty-Eight Hour Law?

SUMMARY OF THE ARGUMENT

The District Court properly determined that a chicken is considered an animal under the federal Twenty-Eight Hour Law. However, the lower court incorrectly failed to acquit Mr. Williams of the charges of violating the State of Florida's Cruelty to Animals Law.

The language of the Twenty-Eight Hour Law lacks clarifying language to determine whether a chicken is an animal subject to the statute's regulations. However, plain meaning of the term "animals", the use of common-sense rationale to compare similar federal legislation, and the underlying purposes of the statute itself all support the lower court's conclusion that chickens are protected under the Twenty-Eight Hour Law. As a result of including the chicken as an animal for purposes of the federal law, the trucking business of Mr. Williams falls under the statute's purview.

The chicken's inclusion under the federal law's regulations raises another issue on appeal regarding whether the State of Florida's Cruelty to Animals Law is preempted by the federal Twenty-Eight Hour Law. Federal preemption applies to the state animal welfare statute because the issue is one of interstate commerce. Although the Florida Cruelty to Animals Law is an evenhanded exercise of the historic state police power to regulate animal welfare, it cannot stand if the burden imposed on interstate commerce is clearly excessive in relation to local benefits. The Twenty-Eight Hour Law's purpose is to ensure humane conditions for animals moving in interstate commerce and the added benefits of applying the state statute to this field are nominal.

However, the burden on interstate commerce is excessive. If this court were to apply the state statute, the trucking industry would likely avoid traveling through

Florida because of the added burdens of the Florida state law. The Florida Cruelty to Animals Law would require the industry to alter their practices in order to comply. Furthermore, application of the state statute would encourage other states to increase animal cargo regulations and cause undue burdens on common carriers to remain compliant with evolving standards in various states. The Supreme Court prohibits state regulations that pose excessive burdens to interstate commerce. The Florida Cruelty to Animals Law poses such a burden and therefore, must be preempted by the federal Twenty-Eight Hour Law.

Thus, the Twenty-Eight Hour Law, not the state animal cruelty statute applies to Mr. Williams's conduct. Although Mr. Williams may have been culpable under the state statute, he is not liable under the federal law. Because he had the chickens in his truck for only twenty-four hours, he is not in violation of the federal law. Therefore, his relief should be granted and his conviction overturned.

ARGUMENT

I. THE TERM “ANIMALS” IN THE TWENTY-EIGHT HOUR LAW INCLUDES CHICKENS.

The District Court properly concluded that chickens are “animals” regulated by 49 U.S.C. § 80502, more commonly known as the federal Twenty-Eight Hour Law. Although the Florida courts have yet to determine whether a chicken is an “animal” for purposes of the federal statute, the analysis of the issue is unambiguous. Of most significance, the underlying purpose of the Twenty-Eight Hour Law is best served by the statute’s inclusion of chickens as animals. Additionally, although the statute itself lacks a definition, the plain meaning of the term “animal” indisputably encompasses chickens. Finally, comparable legislation and precedents indicate a general preference by the courts and the legislature for the inclusion of chickens as animals. More specifically, modern legislation and judicial decisions reflect the societal trend to include chickens as animals rather than birds with avian characteristics. Thus, although the precedents specific to this issue are sparse, “the language of the Twenty-Eight Hour Law and deference to rules of statutory construction tip the balance in favor of a finding that chickens are animals.” Order at 7. Consequently, Jeffrey Williams’s transportation of chickens is subject to the regulations of the federal Twenty-Eight Hour Law. This court of appeals should review *de novo* the district court’s determination of these questions of law. Furthermore, the court maintains plenary appellate authority over all final decisions of the district court. *Salve Regina College v. Russell*, 499 U.S. 225, 231 (1991).

A. Public policy requires the inclusion of chickens and poultry in the definition of “animals” under the Twenty-Eight Hour Law.

Fundamental to the analysis of a statutory term’s definition is the legislative intent or underlying purpose of the statute’s enactment. The underlying purpose of the Twenty-Eight Hour Law was “to prevent cruelty and injury to animals that were shipped long distances upon cars or boats.” *Chesapeake & O. Ry. Co. v. American Exch. Bank*, 23 S.E. 935, 936 (Va. 1896). This law, in contrast with the United States Department of Agriculture (“USDA”) regulations, is founded on humane objectives rather than sanitation objectives. *Id.* Moreover, the “animals” protected under this statute include any animal that would travel for long distances on boats, railcars, trucks, etc. and would potentially suffer from lack of food, water, and rest. *Id.* Furthermore, the language of the statute and recent revisions of the language to replace “cattle, sheep, swine, or other animals” with “animals” provides no indication that the statute was meant only to include those animals used for food. *See id.* Conversely, the statute and its recent language substitution intends to prevent suffering of animals transported in any vehicle or vessel in which the animals have no food, water, space, or an opportunity for rest. 49 U.S.C. §80502 (1994).

Mr. Williams’s business of transporting chickens is regulated by the Twenty-Eight Hour Law. Although the inclusion of chickens as “animals” under the statutory language is disputed, the underlying purpose of the statute is best served with the inclusion of those transported chickens. Much like the cattle, sheep, and swine were transported in the late 1800’s, Williams ships his chickens in a confined truck that provides no room for rest, feeding, or watering during the haul. Williams’s chickens

undoubtedly experience the suffering of which the federal law was designed to prevent. In fact, the chickens in this case are at an even higher risk of suffering as a result of their extremely cramped conditions. Cattle, sheep, and swine, which are indisputably protected by the law, are typically transported in crowded cars or on boats. In comparison to those animals, the conditions of chickens and their risk of suffering are exacerbated as a direct result of Williams's practice of stacking chickens on top of one another. The methods used to transport chickens and the potential for their suffering as a result of transportation make chickens a prime example of the "animals" protected by the Twenty-Eight Hour Law. Furthermore, the recent revisions of the statute itself indicate the legislature's realization of the increasing amount and variety of animals that are currently shipped nationwide. In other words, the revisers broadened the language of the statute in response to the prevalence of factory farming, the mass production of animals for sale to a national market, and the need to prevent suffering of those animals transported as a result.

B. The plain meaning of "animals" includes chickens under the Twenty-Eight Hour Law.

Although the federal Twenty-Eight Hour Law lacks a definition section for the terms contained therein, the meaning of the word "animals" in the statute can be ascertained by the plain meaning of the term itself. To deduce a term's plain meaning, courts often refer to dictionaries to assess the ordinary meaning of the term. *See Levine v. Conner*, 540 F.Supp.2d 1113, 1115 (N.D.Cal. 2008). Since the federal law was recently revised to substitute "animals" for the previous "cattle, sheep, swine, or other animals", it is appropriate to use a more recent dictionary to discern the plain meaning of the term. Merriam Webster's Collegiate Dictionary defines "animal" as: "any of a kingdom

(Animalia) of living things including many-celled organisms . . . being organized to a greater degree of complexity, and in having the capacity for spontaneous movement and rapid motor responses to stimulation”. Merriam Webster, *Merriam Webster’s Collegiate Dictionary* (10th ed., Merriam-Webster, Inc. 1993). Under the dictionary definition of the term “animal”, a chicken clearly fits the description.

“Where the statutory language is clear and consistent with the statutory scheme at issue, the plain language of the statute is conclusive and the judicial inquiry is at an end.”

Botosan v. Paul McNally Realty, 216 F.3d 827, 831 (Cal. 2000) (citing *California Franchise Tax Bd. v. Jackson (In re Jackson)*, 184 F.3d 1046, 1051 (9th Cir. 1999)).

Despite the risk of redundancy, it is important to acknowledge that the purpose of the statute is to prevent the suffering of those animals or beings capable of suffering as a result of crowded transportation conditions. With this in mind, the plain meaning of the statutory term “animals” is consistent with the statutory scheme at issue. Chickens, as animals capable of movement, response to stimulation, and the capacity to feel sensations, must be included in the term “animals” to further the purpose of the statute. Including chickens under the protection of the Twenty-Eight Hour Law furthers the purpose of preventing the suffering of animals as a whole. Therefore, the chickens transported by Mr. Williams are included under the plain meaning of the term “animals” for purposes of the federal law and are subject to the law’s regulations.

C. Legislation designed to exclude chickens from the regulated group of “animals” generally contains clarifying language.

The determination of whether a chicken is an animal usually revolves around the type or purpose of the legislation. Although the Humane Methods of Slaughter Act and

the Animal Welfare Act don't protect chickens, their purposes are easily distinguished from the purpose of the Twenty-Eight Hour Law. The sole purpose for the Humane Methods of Slaughter Act was to delegate the duty of ensuring humane slaughter of the country's livestock to the Department of Agriculture. 7 U.S.C.A. § 1901 (2006). Because Congress was specifically concerned with the humane slaughtering of livestock, the statute clearly enumerates the exclusion of poultry from its purview and purposefully neglects to regulate transportation whatsoever. *Id.* Similarly, the Animal Welfare Act specifically defines which species are included in the term "animal". 7 U.S.C.A. § 2132 (2006). Because this Act was designed to protect those animals in entertainment, research, etc. It specifically excludes livestock and poultry as well as other animals intended for food. Due to the legislative purpose of the Act, the statutory language specifies which animals are protected in a separate definitions section. The clarifications and definitions contained within other pieces of animal legislation further indicate the intentions of the revisers of the Twenty-Eight Hour Law. More specifically, the drafters or revisers, noting the specific language in similar legislation, purposefully left the broad term "animals" in the statutory language. If the legislature had intended to exclude chickens in the group of animals under the federal law, they would have more than likely provided additional language or a definition section for clarification. Thus, the legislature's intentions were consistent with the plain or ordinary meaning of the word "animal" and it intended to include chickens in this broad group.

The District Court Judge Jamie Burrito concluded chickens are animals for the purpose of the Twenty-Eight Hour Law. Although the court reviews this issue *de novo* it is important to acknowledge the role of judicial review in the evaluation of a statutory

term. Much like the Federal Laboratory Animal Welfare Act, the Secretary of Agriculture is entrusted with the enforcement of the Twenty-Eight Hour Law. 7 U.S.C.A. § 2131 (2006). Furthermore, the Secretary's exclusion of chickens from the term "animals" would be within his Congressionally-delegated discretion so long as he doesn't exceed the bounds of the statute's plain meaning. *See Animal Legal Defense Fund v. Madigan*, 781 F.Supp. 797, 801 (D.D.C. 1992). However, the Secretary has made no such exclusion and the authority to make such delineations should be reserved to him rather than the judiciary. In fact, the federal agency has declined to even file a brief in these proceedings. Order at 6. Thus, the judiciary should be cautious in deciding whether a chicken is included in the term "animals" in order to reserve the task of distinguishing the rule to the agency itself. Essentially, the judiciary should err on the side of inclusion rather than pursuing a narrower rule.

Despite the inconsistencies and vague language of the Twenty-Eight Hour Law, common-sense definitions and the purpose of the statute itself are most favorable to the conclusion that a chicken is an "animal". The statute, designed to prevent needless suffering of animals, is clearly applicable to the chickens transported by Mr. Williams. These chickens are at risk of the suffering the statute was designed to prevent, they are transported using methods the statute was designed to regulate, and their incorporation into the group of "animals" provided by the statute is in accordance with the ordinary meaning of the term "animals". Thus, the Twenty-Eight Hour Law is applicable to Mr. Williams's case.

II. THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION BARS WILLIAMS'S CONVICTION UNDER THE FLORIDINA ANTI-CRUELTY STATUTE BECAUSE THE STATE ANTI-CRUELTY LAW IS PREEMPTED BY THE FEDERAL TWENTY-EIGHT HOUR LAW.

The Floridina State District Court of Stinsonia was erroneous in overlooking the commerce clause issue in this case, and in doing so, came to the wrong conclusion. The Twenty-Eight Hour Law's primary purpose is to ensure animal welfare while animals are moving in interstate commerce, so that common carriers, such as Truckin Chicken's fleet owned by Mr. Williams may move about freely from state to state. *See The People v. The Southern Pacific Company*, 208 Cal.App.2d 745, 752 (Ca. 5th Dist. 1962), *see also Chesapeake & O. Ry. Co. v. American Exch. Bank*, 44 L.R.A. 449 (Va. Sup. Ct. of Appeals 1896). Interstate commerce is a field historically dominated by Congress and federal law. Floridina's Cruelty to Animals Law prevents free movement in interstate commerce. 8 Floridina Revised Statutes § 621(a-d). It is therefore invalid when applied to common carriers moving through the state of Floridina because Congress dominates the field of interstate commerce and is given plenary power over its regulation. Second, the Floridina statute conflicts with the objective of Congress in enacting the Twenty-Eight Hour Law to have uniform regulation concerning common carriers moving in interstate commerce. This erroneous oversight by the trial court is not a problem for the State of Floridina Court of Appeals, Division Three, because the standard of review for appeal of preemption issues is de novo, as preemption is a question of law. *Turner v. Peralas*, 869 F.2d 140, 141 (2d Cir. 1989).

The Supremacy Clause provides that "this Constitution and the Laws of the United States which shall be made in Pursuance thereof ... 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. It is basic to this constitutional command that all conflicting state provisions be without effect. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). Analysis of the supremacy clause begins with the assumption that Congress did not intend to displace state law. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). However, “the purpose of Congress is the ultimate touchstone of preemption analysis” *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978). Congress may evidence its intent to displace state law in several ways.

The United States Supreme Court has recognized three specific types of preemption: (1) express preemption; (2) implied field preemption; and (3) implied conflict preemption. *Chicago & N.W. Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981). Express preemption occurs when Congress has signaled its intent to preempt state law by using language in the federal statute that explicitly preempts state regulation. *Id.* (quoting *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 98 (1992)). Implied field preemption occurs when the federal statute does not include explicit language preempting state law, but “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” *Pennsylvania R. Co. v. Public Service Comm’n*, 250 U.S. 566, 569 (1919), or the act of Congress touches 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. *Heinz*, 312 U.S. 52, 61 (1941). Implied conflict preemption occurs when the federal statute does not include explicit language preempting state law, yet “compliance with both state and federal law is a physical impossibility” *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132,

142-143 (1963) or the state law “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” *Heinz*, 312 U.S. at 67. The Twenty-Eight Hour Law does not include explicit language preempting state law on the same subject. However, this Court will find that both types of implied preemption - field and conflict preemption - apply to the facts of Mr. Williams’s case and thereby prohibit the application of Florida’s Cruelty to Animals Law.

A. Field preemption prohibits the application of Florida state law.

“The power of Congress to regulate interstate commerce is plenary and extends to all such commerce be it great or small” *National Labor Relations Board v. Fainblatt*, 306 U.S. 601, 606 (1939). Black’s Law Dictionary defines “plenary” as: “Full; complete; entire” (543 Bryan A. Gardner ed., 8th ed., West 2004). The U.S. Supreme Court has ruled that Congress’ power over interstate commerce covers the entire field; it is complete. “Long ago it was settled that even in the absence of a Congressional exercise of this power, the Commerce Clause prevents the State from erecting barriers to the free flow of interstate commerce” *Raymond Motor Transp. Inc., v. Rice*, 434 U.S. 429 (1978) (citing *Cooley v. Board of Wardens*, 12 How. 299 (1852)), U.S. Const. art. 1 § 8 cl.3.

Here, the state of Florida correctly argues that regulation of animal welfare is within its police power, as U.S. common law has historically placed regulation of animal welfare in the hands of the state. *Nicchia v. New York*, 254 U.S. 228, 230-31 (1920).

Animal welfare regulation is also a legitimate police power of the states, and the Florida Cruelty to Animals Law is a legitimate regulation for the protection of animal welfare within the state. Although the Florida state statute both serves a legitimate

purpose and is within a field traditionally occupied by the states, the inquiry does not end there.

The Florida statute is an exercise of local power that serves to further a legitimate local interest (animal welfare) but simultaneously burdens interstate commerce. When a local regulation serves a legitimate local interest, yet burdens interstate commerce, the test to determine if the state statute will survive preemption involves balancing state and federal interests. Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on interstate commerce is clearly excessive in relation to the putative local benefits. *Huron Portland Cement Co. v. City of Detroit, Mich.*, 362 U.S. 440, 443 (1960). The extent of the burden that will be tolerated will of course depend upon the nature of the local interest involved and whether it could be promoted as well with a lesser impact on interstate activities. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970). Although the Florida statute is a legitimate exercise of the state police power, and animal welfare is an area of law historically regulated by state law, the Florida statute creates too great a burden on interstate commerce, and therefore must be preempted by the federal Twenty-Eight Hour Law.

The burden imposed on interstate commerce is excessive in relation to the local benefit provided by the Florida Cruelty to Animals Law. First, many of the benefits covered by the state statute are covered by the Twenty-Eight Hour Law. Both statutes aim to prevent inhumane treatment of animals. The Twenty-Eight Hour Law applies specifically to the prevention of inhumane treatment of animals while they are in interstate commerce. It is more tailored than the state statute concerning the protection of

animal welfare in the specific case of animals moved via common carrier in interstate commerce. There simply is little to no added benefit to animal welfare as they move in interstate commerce following the Florida Cruelty to Animals Law instead of the Twenty-Eight Hour Law.

The burdens on interstate commerce are great if the Florida statute is not preempted. Mr. Williams and other common carriers should be able to rely that as long as they follow the guidelines of the Twenty-Eight Hour Law, they will not suffer penalties for not treating their animal cargo humanely. Although Mr. Williams is but one carrier in interstate commerce, if we look to the aggregate principal in *Wickard v. Filburn*, 317 U.S. 111, 127-28 (1942), wherein if we think of the millions of trucks moving in interstate commerce each year, with animal cargo that generate millions of dollars each year in gross domestic product, the impact on interstate commerce is far from trivial. If the Twenty-Eight Hour Law does not preempt the Florida Cruelty to Animals Law, then millions of tractor trailer trucks moving throughout Florida and other states with similar state statute limiting interstate commerce will be forced to alter the conditions in which they are keeping their animal cargo at the entry of each new state. This would cost a great loss of time and money for the Nation's trucking industry as a result of having different state laws impose different burdens on truckers.

Common carriers such as Mr. Williams and Truckin Chicken should be able to rely on a uniform standard in which they know they are following the law in regard to transporting animals in a humane manner. Common carriers should also not have to bear the expense of changing the condition of their trucks from state to state to comply with individual laws. If this Court applies the Florida statute to Mr. Williams's case, then

common carriers will likely avoid moving through Florida because of the burden of having more stringent state standards of confinement, and not having a uniform federal law applied to common carriers upon which they can rely.

It is also important to note that there is a recognized abstract principle that may be taken as a postulate for testing whether particular state legislation is beyond state power: The state legislation is invalid if it unduly burdens that commerce in matters where uniformity is necessary – necessary in the constitutional sense of useful in accomplishing a permitted purpose. Where uniformity is essential for the functioning of commerce, a state may not interpose its local regulation. *Morgan v. Com. of Va.*, 328 U.S. 373 (1946). Uniformity is rarely more essential than to common carriers such as Truckin Chicken. As previously stated, without uniform standards of care for animal cargo, the cost to trucking companies and hassle to drivers will be excessive as they make adjustments to the cargo load and possibly to the tractor-trailers themselves at the entry and exit of each state. It is crucial for American business that common carriers have a uniform standard upon which to rely so that they can quickly and efficiently deliver transport goods across the nation. If the court rules the Twenty-Eight Hour Law preempts Florida state law, they will be enforcing standards of humane treatment that all common carriers can rely on, thereby encouraging common carriers to travel within Florida.

It is proper to say that field preemption applies in this case, as “the act of Congress touches 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”, *Heinz*, 312 U.S. 52 at 61. Congress’ regulation over interstate commerce in the area of ensuring humane conditions for animal cargo is a field completely covered by the

Twenty-Eight Hour Law. If individual state laws, such as the Florida Cruelty to Animals Law were not preempted by the Twenty-Eight Hour Law, an exceedingly great financial and time burden would be created for interstate carriers in a field that demands uniformity to promote freedom of movement. The burden created would be excessive in comparison to the benefit to animal welfare of the Florida statute.

B. If the Court does not find field preemption applies, then conflict preemption prohibits the application of Florida state law.

Conflict preemption prevents the Florida Cruelty to Animals Law from applying to Mr. Williams. Although the Florida Cruelty to Animals Law is in certain areas more stringent than the Twenty-Eight Hour Law, it is not a physical impossibility to comply with both the Florida state statute and the federal statute. Conflict preemption arises in this case because Florida's statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" concerning the Twenty-Eight Hour Law. This type of conflict preemption is also known as obstacle preemption.

As explained above, the purpose of the Twenty-Eight Hour Law is to ensure humane treatment of animal cargo moving in interstate commerce. The Twenty-Eight Hour Law therefore has a dual purpose, both ensuring that animals receive humane treatment, and regulating interstate commerce by providing a uniform standard of care that all common carriers can rely on to know they are obeying the law. Florida's Cruelty to Animals Law is an obstacle to the Twenty-Eight Hour Law's purpose of regulating interstate commerce.

Although Florida's statute is a legitimate exercise of state police power, it is excessively burdensome on interstate commerce in relation to the benefit the state statute

provides. If the Twenty-Eight Hour Law is followed, Florida can still be assured that animals moving through its state in interstate commerce are receiving humane treatment as defined by Congress, while not causing common carriers great burdens of expense in time and money by making changes to their cargo load and vehicles in order to conform to Florida standards. If this Court applies Florida's state statute in this case, it will stand as an obstacle to the full purpose of the Twenty-Eight Hour Statute, which includes the regulation of interstate commerce.

Having uniformity of law is crucial in a field such as the trucking industry, of which Mr. Williams's Truckin Chicken is a part, because of the number of common carriers that daily cross state lines in their line of business. If all animal carriers were expected to keep abreast on each state's laws they entered, and, to change the conformity of their cargo and vehicle to fit each state's standards, the expense would be massive. There is already in existence a federal law that has a purpose of ensuring humane passage of animal cargo in interstate commerce. That law is the Twenty-Eight Hour Law. The Court should not open the door to have states burdening the purpose of the Twenty-Eight Hour Law, which in large part seeks to regulate interstate commerce, through differing standards of animal care. The Twenty-Eight Hour Law seeks to keep humane standards of animal care uniform, so that all common carriers are aware of the law and may rely on such law. If the Florida Cruelty to Animals Law is applied to this case, it will stand as an obstacle to accomplishment of the full purpose and objective of the federal Twenty-Eight Hour Law – the regulation of interstate commerce.

CONCLUSION

For these reasons, Mr. Williams request this Court find that a chicken is an animal for the purposes of the federal Twenty-Eight Hour Law and that the application of Florida's Cruelty to Animals Law violates the Supremacy Clause of the United States Constitution. Since the Florida law is preempted by the federal law, Mr. Williams requests that he be held to the federal Twenty-Eight Hour Law standards and, as a result, that this Court overturn his conviction and dismiss his indictment.

Respectfully submitted,

Moot Court Team Seven

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January 5, 2009

CERTIFICATION

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.

____Melissa McHendrix____
Team Member

Date: __January 5, 2009____

____Sarah Haegele____
Team Member