

STATE OF FLORIDINA

COURT OF APPEALS

DIVISION THREE

Cr. No. 08-1028

THE PEOPLE,

Respondent/Cross-Appellant,

v.

JEFFREY WILLIAMS,

Appellant/Cross-Respondent.

BRIEF FOR RESPONDENT/CROSS-APPELLANT

On Appeal from the Judgment and Order of the
State of Floridina District Court for the District of Stinsonia
Presiding Judge: Hon. Matthew H. Pan

Team 6

Attorneys for Respondent/Cross-Appellant

TABLE OF CONTENTS

	<u>Page</u>
Table of Cases And Authorities	iii
Relevant Statutes	vi
Issues Presented	1
Statement of The Case	1
Summary of the Argument	2
Argument	3
I. THE SUPREMACY CLAUSE DOES NOT BAR CONVICTION OF MR. WILLIAMS UNDER FLORIDINA’S CRUELTY TO ANIMALS LAW.	3
A. <u>Congress did not intend for the Twenty-Eight Hour Law to preempt State Law.</u>	3
B. <u>The Twenty-Eight Hour Law does not preempt Floridina’s statute under express, conflict, obstacle or field preemption theories.</u>	5
1. Express Preemption	5
2. Conflict Preemption	6
3. Obstacle Preemption	7
4. Field Preemption	8
C. <u>Mr. Williams’s attempt to avoid prosecution altogether should be prohibited because it would undermine the purpose underlying the Twenty-Eight Hour Law and Floridina’s statute.</u>	11
D. <u>Mr. Williams’s invitation to adopt the holding in People v. Southern Pacific Co. is without merit.</u>	11
II. EVEN IF THE STATE ANTI-CRUELTY STATUTE IS PREEMPTED, THE TWENTY-EIGHT HOUR LAW DOES NOT APPLY BECAUSE CHICKENS ARE NOT ANIMALS UNDER THE LAW.	12

A.	The common meaning of “animal” at the time the Twenty-Eight Hour Law was enacted did not include chickens.	13
B.	The contemporary meaning of “animal” does not include chickens.	15
C.	Consistent with other federal animal welfare statutes, the Twenty-Eight Hour Law excludes chickens from the definition of “animal.”	19
D.	The USDA does not include chickens within the coverage of the Twenty-Eight Hour Law.	22

CONCLUSION		23
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TABLE OF CASES AND AUTHORITIES

<u>CASES:</u>	<u>Pages</u>
<i>Balachova v. Mukasey</i> , 547 F.3d 374 (2d Cir. 2008)	3
<i>Chesapeake v. American Exch. Bank</i> , 23 S.E. 935 (Va. 1896)	14, 15
<i>Cipollone v. Liggett</i> , 505 U.S. 504 (1992)	3
<i>Crosby v. National Foreign Trade Council</i> , 530 U.S. 363 (2000)	5, 6, 7
<i>DeHart v. Austin, In.</i> , 39 F.3d 718 (7th Cir. 1994)	3-4, 9
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007)	12
<i>Hillsborough County, Fla. v. Automated Medical Lab.</i> , 471 U.S. 707 (1985)	5, 6, 8, 9
<i>Hines v. Davidowitz</i> , 312 U.S. 52 (1941)	7, 8, 9
<i>Kansas v. Claiborne</i> , 505 P.2d 732 (Kan. 1973)	15-16
<i>Lock v. Falkenstine</i> , 380 P.2d 278 (Okla. Crim. App. 1963)	14, 16
<i>Medtronic v. Lohr</i> , 518 U.S. 470 (1996)	5, 8-9
<i>Metropolitan Life Ins. Co. v. Mass.</i> , 471 U.S. 724 (1985)	8-9
<i>Molski v. M.J. Cable, Inc.</i> , 481 F.3d 724 (9th Cir. 2007)	12
<i>Morales v. Trans World Airlines, Inc.</i> , 504 U.S. 374 (1992)	3-4
<i>Napier v. Atlantic Coast Line R. Co.</i> , 272 U.S. 605 (1926)	9
<i>Nicchia v. New York</i> , 254 U.S. 228 (1920)	9
<i>Payne v. Coles</i> , 15 Va. 373 (1810)	14
<i>People v. Southern Pacific Co.</i> , 208 Cal. App. 2d 745 (1962)	11-12
<i>Perrin v. U.S.</i> , 444 U.S. 37, 42 (1979)	12
<i>Rice v. Sante Fe Elevator Corp.</i> , 331 U.S. 218 (1947)	8, 9
<i>Slaughter-house Cases</i> , 83 U.S. 36 (1873)	13

<i>Sprietsma v. Mercury Marine</i> , 537 U.S. 51 (2002)	5-6, 8
<i>State v. Lapage</i> , 57 N.H. 245, 266 (1876)	14
<i>Terry v. State</i> , 17 Ga. 204, 208 (1855)	14
<i>Wis. Dept. of Indus. v. Gould, Inc.</i> , 475 U.S. 282 (1986)	6
<u>CONSTITUTION:</u>	
U.S. Const. art. VI, § 2	3
U.S. Const. art. I, § 8, cl. 3	9
<u>FEDERAL STATUTES:</u>	
7 U.S.C. § 1901 (1978)	19-20
7 U.S.C. § 2131(1)-(2) (1976)	19
21 U.S.C. § 602 (2008)	11
45 U.S.C. § 71 (1906)	4, 11-12, 13
49 U.S.C. § 80502 (1994)	Passim
<u>FEDERAL REGULATIONS:</u>	
7 C.F.R. § 2.18 (2008)	11
9 C.F.R. § 1.1 (2008)	20
9 C.F.R. § 89.1 (2008)	22
9 C.F.R. § 89.1 - § 89.5 (2008)	22
9 C.F.R. § 300.2 (2008)	11
9 C.F.R. § 301.2 (2008)	20, 21, 22
<u>STATE STATUTES:</u>	
Conn. Gen. Stat. § 53-249 (West, Westlaw through 2008 Aug. Sp. Sess.)	18
Conn. Gen. Stat. § 53-250 (West, Westlaw through the 2008 Aug. Sp. Sess.)	18

8 FRS § 621 (a) - (d)	Passim
R.I. Gen. Laws 1956, § 4-1-7 (West, Westlaw through 2008)	18
R.I. Gen. Laws 1956, §4-1-9 (West, Westlaw through 2008)	18
18 Pa. Cons. Stat. § 5511 (West, Westlaw through Reg. Sess. Act 2008-80, Sp. Sess. No. 1 Act 2)	18
Wis. Stat. § 134.52 (West, Westlaw through 2007 Act 242)	18
<u>LEGISLATION:</u>	
H.R. Rep. No. 103-180, at 1 (1994); reprinted in 1994 U.S.C.C.A.N. 818	4
<u>MISCELLANEOUS:</u>	
Animal Agriculture Alliance, <i>Myths & Facts</i> , http://www.animalagalliance.org/current/home.cfm?Category=Myths_and_Facts&Section=Main (last visited Jan. 5, 2008)	17
Cong. Globe, 42 nd Cong., 2d Sess. 4226 (1872)	Passim
Dictionary.com, http://dictionary.reference.com/browse/livestock	19
<i>FSIS Tightens Residue Policies, Procedures</i> , Journal of the American Veterinary Medical Association, Oct. 1, 2001, http://www.avma.org/onlnews/javma/oct01/s100101e.asp (Oct. 1, 2001)	17
Gary C. Smith et al, <i>Effect of Transport on Meat Quality and Animal Welfare of Cattle, Pigs, Sheep, Horses, Deer, and Poultry</i> , Dec. 2004, http://www.grandin.com/behaviour/effect.of.transport.html	15
<i>In re: The HSUS: Petition to Apply 28 Hour Law to Truck Transport of Farm Animals</i> (Oct. 4, 2005)	18-19
<i>Legislation Would Phase Out Some Antimicrobials Used Subtherapeutically in Livestock</i> , Journal of the American Veterinary Medical Association, April 1, 2002, http://www.avma.org/onlnews/javma/apr02/s040102b.asp	17
Temple Grandin, <i>Recommended Animal Handling Guidelines and Audit Guide 2007 Edition</i> , American Meat Institute Foundation (2007)	17

RELEVANT STATUTES

49 U.S.C. § 80502 – Transportation of Animals (Twenty-Eight Hour Law)

(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

(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

(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

8 FRS § 621, Florida's Cruelty to Animals Law

“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.

ISSUES PRESENTED

I. Can a state statute with the underlying purpose of preventing animal cruelty within its borders coexist with a federal law enacted to ensure the humane interstate transport of animals, when the federal law does not expressly provide for preemption, the state statute neither conflicts with the federal law nor is an obstacle to the federal law's objectives, and the state is acting within its police powers?

II. Are chickens excluded from the definition of "animals" under the Twenty-Eight Hour Law when the understanding of the term at the time of enactment included only four footed beasts, the contemporary understanding separates "fowl" from "animals," and the current federal statutory scheme of animal welfare excludes birds?

STATEMENT OF CASE

Jeffrey Williams (Mr. Williams) has stipulated to the fact that he transported approximately ten thousand chickens in a tightly packed tractor-trailer truck for up to twenty-four hours with no food, water, ventilation or veterinary care. He has also gone further to attempt to evade prosecution for the forty-five counts of animal cruelty he admits to committing in Florida by claiming that the Twenty-Eight Hour Law, which does not apply to this case, preempts the Florida statute.

Mr. Williams transports live birds as the sole proprietor of Truckin Chicken. (Order at 1). He collects birds along the East Coast and sells them to the United States Department of Agriculture (USDA) which uses the birds for food in school lunches. (Order at 1). Mr. Williams packs approximately ten thousand birds tightly into tractor-trailer trucks. (Order at 2). The truck always pass through at least two states. (Order at 2). Although the transport of the birds does not take more than twenty-four hours, Mr. Williams does not stop at any point between the pick-up

and arrival at the destination. (Order at 2). Mr. Williams does not provide food, water, ventilation or veterinary care during the transport, and approximately fifteen percent of the chickens usually die due to the lack of care. (Order at 2).

Mr. Williams was stopped by Florida Highway Patrol officer for a taillight violation while traveling within the state in 2008. (Order at 2). The officer became concerned upon finding a large number of dead chickens mixed with live chickens, and chickens that were unable to stand up. (Order at 2). A local animal control officer advised the Patrol officer that the inhumane conditions were a violation of the Florida Cruelty to Animals Law. (Order at 2). Mr. Williams was arrested and charged with forty-five counts of cruelty to animals. (Order at 2).

Mr. Williams stipulated that he had committed the forty-five counts of animal cruelty. (Briefing Order at 1). His defense to the charges alleged that 49 U.S.C. § 80502 (The Twenty-Eight Hour Law) preempted the states right to prosecute him under Florida's Cruelty to Animals Law. (Briefing Order at 1). The District Court found that the Twenty-Eight Hour Law included chickens and subjected Mr. Williams' conduct to its provisions. (Briefing Order at 1). The District Court also found, however, that the Twenty-Eight Hour Law did not preempt the state prosecution, and Mr. Williams was convicted of all forty-five counts of animal cruelty. (Briefing Order at 1). Mr. Williams alleges on appeal that application of the state Cruelty to Animals Law violates the Supremacy Clause of the United States. (Briefing Order at 1-2).

SUMMARY OF THE ARGUMENT

The Supremacy Clause of the United States Constitution does not bar conviction of Jeffrey Williams under Florida's Cruelty to Animals Law. Congress did not intend for the Twenty-Eight Hour Law to preempt state statutes, there is no express preemption clause, both the federal and state law can be followed simultaneously, and the state statute does not create an

obstacle to the realization of the humane transport of animals. Additionally, Florida is acting within its inherent police powers in regulating the cruel treatment of animals. The court should not allow Mr. Williams to escape because it would undermine the policy behind both the federal law and the state statute.

Even if the state statute were preempted, the Twenty-Eight Hour Law does not apply to Mr. Williams because chickens are not “animals” under the Law. The ordinary meaning of “animals” must be used because the term is not defined within the Law. The common understanding of the term did not include chickens at the time the Law was enacted, and the contemporary understanding of the term has not changed or evolved to include chickens. Additionally, it would be inconsistent with the federal statutory scheme of animal welfare to include chickens under the Law.

The facts of the case are stipulated. The questions on appeal concern preemption and statutory interpretation. A de novo standard of review applies to the application of law to undisputed facts. *Balachova v. Mukasey*, 547 F.3d 374 (2d Cir. 2008).

ARGUMENT

I. THE SUPREMACY CLAUSE DOES NOT BAR CONVICTION OF MR. WILLIAMS UNDER FLORIDA'S CRUELTY TO ANIMALS LAW.

The Supremacy Clause of the United States Constitution, Article VI § 2, does not bar conviction of Jeffrey Williams under Florida's Cruelty to Animals Law, 8 Florida Revised Statutes (FRS) § 621(a) – (d).

A. Congress Did Not Intend for the Twenty-Eight Hour Law to Preempt State Law.

The ultimate touchstone of any preemption analysis is Congress's purpose for enacting the legislation in issue. *Cipollone v. Liggett*, 505 U.S. 504, 516 (1992). To determine the purpose or intent of Congress, the language used in the regulation must be analyzed and the ordinary

meaning of the language assumed to accurately express Congress's legislative purpose. *DeHart v. Austin, In.*, 39 F.3d 718, 722 (7th Cir. 1994) (citing *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374 (1992)).

The underlying purpose behind the Twenty-Eight Hour Law is the humane transport of animals. This is evident in the language used in the law and its original title, Care of Animals in Transit. 45 U.S.C. §§ 71-74 (1906). Since the original enactment of this law in 1873, no substantive changes have been made, even though it has been repealed, restated, and amended. H.R. Rep. No. 103-180, at 1 (1994); *reprinted in* 1994 U.S.C.C.A.N. 818. This law currently applies when animals are transported “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.” 49 U.S.C. § 80502 (1994). Under the federal law, such transportation is limited to the extent that the animals cannot be confined for more than twenty-eight consecutive hours without being unloaded for feeding, water, and rest for at least five consecutive hours. *Id.* Inherent in the federal law is the idea that an animal transported for longer than twenty-eight hours without access to food, water, or proper rest, is inhumane. The law requires that the animals be unloaded “in a humane way into pens equipped for feeding, water, and rest.” *Id.* Thus, it is apparent from the history and language of the law that Congress's purpose was to insure the humane transport of animals.

In addition, beyond the mere language of the law, Congress's original discussions when drafting and passing the law are relevant. From these discussions, it is clear that the welfare of the animals is the primary concern behind this law. Cong. Globe, 42nd Cong., 2d Sess. 4226-4238 (1872). The welfare of those who would subsequently consume the animals was a secondary concern. *Id.*

Beyond the purpose of the law, there was also discussion of amending the legislation to insure that state statutes would not be preempted in this area. *Id.* at 4229-4231, 4236 (statement of Senator Casserly) (“State laws shall be sufficient for the prevention of cruelty to animals within the intent and meaning of this act, and that those laws shall furnish equal means for enforcing those provisions with this act.”) (statement of Senator Bayard) (“I cannot conceive that such a power was ever delegated or intended to be vested in the Congress of the United States under the Federal Constitution.”) (statement of Senator Saulsbury) (“It is an attempt on the part of Congress to usurp the powers that legitimately belong to the States; and in these times . . . [we must] watch with jealous care to see that no encroachment is made on the rights of the states”). The discussion even included a New Jersey law enacted March 27, 1867, which made the cruel beating or torture of an animal a misdemeanor, in order to express their point that “the laws of the States on the subject [need be] enforced” *Id.* at 4229.

B. The twenty-eight hour law does not preempt Florida's statute under express, conflict, obstacle or field preemption theories.

Fundamental to the Constitution is the principal that Congress has the power to preempt state law. *Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372 (2000). There are four types of preemption that can occur: express, conflict, obstacle, and field.

1. Express Preemption

Express preemption occurs when a federal law explicitly states its preemptive effect on a specific domain. *Medtronic v. Lohr*, 518 U.S. 470, 484 (1996). Express preemption is valid so long as Congress is acting within its Constitutional limits. *Hillsborough County, Fla. v. Automated Medical Laboratories*, 471 U.S. 707, 713 (1985). If express preemption were present, it would be necessary to focus on the plain language of the express preemption clause. *Sprietsma*

v. Mercury Marine, 537 U.S. 51, 62 (2002). However, there is no evidence of express preemption in this case, therefore no such clause need be analyzed.

2. Conflict Preemption

Conflict preemption arises when the federal law and state statute cannot both be applied. Because the application of both is impossible, the state statute can only be enforced to the extent that it does not conflict with the federal law. *Hillsborough*, 471 U.S. at 713. “Conflict is imminent when two separate remedies are brought to bear on the same activity.” *Crosby*, 530 U.S. at 380 (quoting *Wis. Dept. of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986)).

Conflict preemption is not present here. A circumstance can be imagined and realized where a person is found guilty of violating both the federal law and state statute. The federal law is specific to the transportation of animals, while the state statute is more broad and covers the cruel treatment of animals in general. Even though there are two separate remedies available, criminal penalties for Florida’s statute and civil penalties for the federal law, different activities are being punished. Under the federal law, transport for more than twenty-eight hours without a proper break for the animals is a violation and considered inhumane. On the other hand, under Florida’s statute, the direct or indirect cruel treatment of *any* living creature is a violation.

It can be argued that the federal law and state statute overlap because a person can be found in violation of the state statute because they deprive an animal of “necessary sustenance, drink . . . [or] room to lie down,” similar to the federal law’s requirements of proper feeding, water, and rest during transport. 8 FRS § 621(a) – (d). However, this argument cannot prevail because one can comply with both laws. Compliance with one law does not automatically necessitate the violation of the other. Furthermore, the Twenty-Eight Hour Law applies to

interstate activities, while Florida's statute only applies to activities within its state, furthering the disconnect between the two statutes.

3. Obstacle Preemption

Obstacle preemption transpires when state law creates a barrier to the execution and realization of Congress's goals and objectives. *Hillsborough*, 471 U.S. at 713. It is thus pertinent to consider what the federal law's intended goals and purposes were and whether or not the state statute stands as an obstacle to the accomplishment and execution of such goals and purposes. *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941). The sufficiency of the obstacle in issue is to be determined by "examining the federal statute as a whole and identifying its purpose and intended effects." *Crosby*, 530 U.S. at 373. If the purpose of the federal law cannot otherwise be accomplished then the state statute must succumb to Congress's regulation within the realm of its delegated power. *Id.*

The goals and purposes behind the Twenty-Eight Hour Law are the humane transport of animals, which the statute lays out to be transport for no more than twenty-eight consecutive hours without a break for feeding, water, and rest for at least five consecutive hours. 8 FRS § 621(a) – (d). These goals and purposes are achieved from the execution and enforcement of the law. Florida's Cruelty to Animals Law does not stand as an obstacle to the accomplishment of such goals and purposes or to the execution of the law. The purpose and effect of Florida's statute is the prevention of the cruel treatment of animals which is not an obstacle to the humane transport of animals. The state statute is beneficial to the federal law because it helps further the Twenty-Eight Hour Law's underlying purpose of ensuring the humane treatment of animals during transport.

It can be argued that the intended goal of the federal law is food safety and should therefore preempt the state statute. However this argument would not prevail because the state statute would still not pose an obstacle to the furthering of the federal law's goals and purposes. The safety of food could still be realized and achieved even if animal cruelty were criminalized in Florida, as in this case. Regardless of whether the intended goal behind the federal law is the humane transportation of animals or food safety, the state statute would not pose an obstacle.

4. Field Preemption

Field preemption comes about when federal law has so occupied a field that state regulation is not only unnecessary, but it is impossible. *Sprietsma*, 537 U.S. at 69. If a field is reserved for federal regulation only and there is no room for state regulation within that field, then field preemption has occurred. *Id.* Field preemption may be inferred if a reasonable inference can be drawn that the field in issue is “one 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.’” *Hillsborough*, 471 U.S. at 713 (quoting *Hines*, 312 U.S. 52). On the other hand, if the regulation is of a field traditionally occupied by the states, then it is assumed that the historic police powers of the states cannot be superseded unless that was Congress's clear and manifest purpose. *Medtronic*, 518 U.S. at 471 (citing *Rice v. Sante Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)).

There is a presumption against federal preemption of state laws, because the state is presumed to be acting within its inherent police powers when enacting legislation. *Medtronic*, 518 U.S. at 485. Under its police powers, a State can create laws and regulate for the protection of the health, safety, morals and welfare of its citizens, *id.* at 475, because such protection is a matter of local concern. *Hillsborough*, 471 U.S. at 719. In such instances, States are given broad

power. *Medtronic*, 518 U.S. at 475 (citing *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)).

Even though the transport of animals across state lines could be included within interstate commerce which is heavily regulated by the federal government as laid out in the Commerce Clause of the Constitution, Article I, § 8, cl. 3, “[t]he regulation of animals has long been recognized as part of the historic police power of the States.” *DeHart*, 39 F.3d at 722 (citing *Nicchia v. New York*, 254 U.S. 228, 230-231 (1920)). Thus, we start with the assumption that this exercise of police power is not to be superseded by the federal government unless it was the clear and manifest purpose of Congress to do so. *Rice*, 331 U.S. at 230 (citing *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611 (1926)) .

Congress’s purpose can be evidenced in several ways. First, Congress’s regulation could be so pervasive that no room is left to the states to supplement it. *Rice*, 331 U.S. at 230. Second, Congress’s field of regulation could be so dominantly occupied by federal interest that the preclusion of state laws on the same subject is precluded. *Id.* Last, the state regulation may generate a result inconsistent with Congress’s objective in enacting the federal regulation. *Id.* If Congress has completely regulated a field, then the states cannot, “inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations.” *Hines*, 312 U.S. at 66-67. It is thus important to determine the field in question and the intent underlying the federal design. *Hillsborough*, 471 U.S. at 714.

The field in question regarding the Twenty-Eight Hour Law would be the humane transportation of animals. This statute was enacted as a result of the suffering and deaths of animals being transported on railroads and the like across the United States in the 19th century. Cong. Globe, 42nd Cong., 2d Sess. 4226-4238 (1872). The federal government intended to

regulate the interstate transport of animals, not the entire humane treatment of animals in general. *See id.* In Congressional discussion when enacting the Twenty-Eight Hour Law, concerns were addressed about the effect this law might have on state regulation. *Id.* at 4229 (statement of Senator Casserly) (“[T]he people who are seeking to carry out honestly and earnestly this great work . . . had better be advised to see that the laws of the States on the subject are enforced”)

Floridina’s statute addresses cruelty to animals in general, with its underlying purpose being the prevention of animal cruelty. Nowhere does the statute mention the transportation of animals within Floridina or beyond Floridina. Floridina’s statute is thus addressing a different subject than the Twenty-Eight Hour Law and does not fall within the same field of regulation, the interstate transport of animals.

Because it was not the clear and manifest purpose of Congress to supersede state statutes, such as Floridina’s, Floridina is acting within its inherent police powers by prosecuting those who are cruel to animals. “The state has not only the supreme right, but the exclusive right over the subject of health of the community within its jurisdiction.” *Cong. Globe*, 42nd Cong., 2d Sess. 4229 (1872). Floridina is protecting its citizens from “cruelty . . . [which] so reacts upon the moral nature of the community, stains and degrades it.” *Id.* at 4231. As stated in the Congressional discussions, the law was enacted for police purposes, “to regulate the moral conduct of individuals within the States, which have ample power to punish any immoral transgressions.” *Id.*

It is possible to argue that Congress’s intent behind the Twenty-Eight Hour Law is food safety, which is an area of persistent federal regulation alone and not open to regulation by the states. The federal agencies that primarily regulate the food industry in the United States are the

Food and Drug Administration (FDA) and the Department of Agriculture (USDA). Their dominant regulation of the food safety field in the United States is evidenced through the duties of the Office of the Secretary of Agriculture, 7 C.F.R. § 2.18 (2008), 9 C.F.R. § 300.2 (2008), and the relevant Federal Meat Inspection Act that instills its duty on the federal government with the cooperation of the states. 21 U.S.C. § 602 (2008). This argument is not strong for federal preemption of the Florida statute, however, because the Florida statute deals with animal cruelty and not food safety. The Florida statute is thus beyond the scope of the food safety field and federal preemption.

C. Mr. Williams's attempt to avoid prosecution altogether should be prohibited because it would undermine the purpose underlying the Twenty-Eight Hour Law and Florida's statute.

Mr. Williams is attempting to avoid prosecution altogether by arguing that the Twenty-Eight Hour Law preempts Florida's Cruelty to Animals Law and that he is not guilty under the Twenty-Eight Hour Law because he never drives for more than twenty-four hours at a time. This court should not allow Mr. Williams to succeed in such a desperate attempt. Congress never intended to allow people to pick and choose which statute to apply. To allow Mr. Williams to escape prosecution would undermine the purpose of the federal law, which is the humane transport of animals, and the state statute, which is the humane treatment of animals, in general. If Mr. Williams were to succeed in his appeal, then more people would carelessly and harmfully violate state animal cruelty laws in the hopes that they will succeed on a federal preemption argument.

D. Mr. Williams's Invitation to Adopt the Holding in *People v. Southern Pacific Co.* is Without Merit.

In *People v. Southern Pacific Co.*, 208 Cal. App. 2d 745 (1962), the Court held that prosecution under California's anticruelty law was barred by the Twenty-Eight Hour Law's

predecessor, 45 U.S.C. §§ 71-74. Mr. Williams invites this Court to adopt that holding and thus hold that Florida's statute is preempted. The California case can be easily distinguished from this case, however, and the Court should not accept Mr. Williams's invitation.

The California Court recognized that the state has an interest in "protecting animals within its borders from inhuman treatment by man by imposing and enforcing criminal sanctions." *Southern Pacific*, 208 Cal. App. 2d at 750. However, this interest does not automatically extend to matters affecting interstate commerce, especially when "Congress has left no room for the states to supplement it[s] " federal scheme of ensuring the "uniform humane treatment of animals transported interstate . . . [and the] uniform liability upon all common carriers." *Id.* at 752.

The California anticruelty statute can be distinguished from the Florida anticruelty statute because the California statute "closely follows the federal act." *Id.* The Florida statute, on the other hand, makes no mention of the transport of animals.

II. EVEN IF THE STATE ANTI-CRUELTY STATUTE IS PREEMPTED, THE TWENTY-EIGHT HOUR LAW DOES NOT APPLY BECAUSE CHICKENS ARE NOT ANIMALS UNDER THE LAW.

When words are not defined within a statute they should be interpreted as taking the ordinary, common meaning. *Perrin v. U.S.*, 444 U.S. 37, 42 (1979); *Gonzales v. Carhart*, 550 U.S. 124, (2007). To determine the common meaning, courts may consider the meaning of the term at the time Congress enacted the statute, the development and evolution of the common definition, and the statutory scheme at issue. *Perrin*, 444 U.S. at 42-43; *Molski v. M.J. Cable, Inc.*, 481 F.3d 724, 732-733 (9th Cir. 2007).

A. The common meaning of “animal” at the time the Twenty-Eight Hour Law was enacted did not include chickens.

The common meaning of the term “animal” at the time the Twenty-Eight Hour Law was enacted excluded birds and fowl. A Louisiana statute enacted in 1869, and in force at the time the Twenty-Eight Hour Law was passed, used similar language and only applied to animals similar to cattle. *Slaughter-house Cases*, 83 U.S. 36 (1873). The Louisiana legislature passed a statute in March of 1869 stating, in part, “it shall not be lawful to land, keep, or slaughter any cattle, beeves, calves, sheep, swine, or other animals . . . at any point or place within the city of New Orleans.” *Id.* at 1. The statute listed more specifically the animals covered by the statute in Section 5, stating that once the Crescent City Stock Landing and Slaughter-House Company had established a slaughter-house open to the public, “it will no longer be lawful to slaughter cattle, hogs, calves, sheep, or goats, the meat of which is determined for sale.” *Id.* at 7. The statute went on to set forth specific fees for the slaughter of animals covered by the statute, “[f]or all beeves, \$1 each; for all hogs and calves, 50 cents each; for all sheep, goats, and lambs, 30 cents each.” *Id.* at 9. There was no mention of chickens, fowl or poultry in the statute.

The language used in the Louisiana statute is very similar to the language used in the Twenty-Eight Hour Law. The Twenty-Eight Hour Law originally stated “[n]o railroad . . . whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed . . . shall confine the same . . . for a period longer than twenty-eight consecutive hours without unloading the same in a humane manner” 45 U.S.C. § 71 (1906). As in the Louisiana statute, the “other animals” language in the Twenty-Eight Hour Law refers to other animals similar to those enumerated, such as goats. Both laws list cattle, sheep and swine before referring to “other animals.” This language, as evidenced by the Louisiana statute, was meant to

cover other animals similar to those listed rather than chickens.

The common usage of “animal” at the time the law was enacted adds credence to defining “animals” as to exclude chickens. It was generally accepted that “animal” included only “beasts,” distinguishing these creatures from the “fowl of the air” and “fish of the sea.” *State v. Lapage*, 57 N.H. 245, 266 (1876) (distinguishing between “beasts of the field” and “fowl of the air” in an evidentiary hypothetical); *Terry v. State*, 17 Ga. 204, 208 (1855) (distinguishing between “beasts of the field” and “fowls of the barn-yard” in a discussion of man’s animality); *Payne v. Coles*, 15 Va. 373, 398 (1810) (distinguishing between the “birds of the air” and the “beasts of the field” in a discussion of affection for offspring); *Lock v. Falkenstine*, 380 P.2d 278, 281 (1963) (quoting *Genesis*). Fowl and fish were regarded differently than the “beasts” due to the value of the “beasts of the field” in an agricultural world.

The Senate debates concerning the Twenty-Eight Hour Law also show the common usage of the term “animal” by the Senators debating the passage of the law. Cong. Globe, 42nd Cong., 2d Sess. 4226-4238 (1872). The Senators consistently refer to cattle in the debates. The only other animals mentioned during the discussion are hogs, *id.* at 4228, and horses. *Id.* at 4230. Chickens, or poultry, are not mentioned during the debate. The reference to horses, however, evidences an intent to include animals similar to those specifically at issue, namely cattle.

In *Chesapeake v. American Exch. Bank*, the court found that even though the words “horses” and “mules” were not used in the Twenty-Eight Hour Law, the language “other animals” was sufficiently comprehensive to embrace those animals. 23 S.E. 935, 937 (Va. 1896). The court found that all animals which would suffer in like manner with cattle, sheep and swine were covered by the Law. *Id.* Although one could argue that this case may be analogized to the case at hand, there are two significant aspects indicating chickens are not covered as horses are

under the law. First, horses were expressly considered in the debates concerning the passage of the Law. Cong. Globe, 42nd Cong., 2d Sess. 4230 (1872). Second, the court found that all animals *which would suffer in a like manner* with cattle, sheep and swine were meant to be covered. *Chesapeake*. 23 S.E. at 937.

Four footed animals such as horses, mules, and goats would suffer in the same way cattle would on a long journey without a stop for rest. These animals are transported standing up, packed into trailers. Chickens, on the other hand, are much smaller and may lie down in transit. The amount of space necessary for a chicken to lie down is no more than needed for it to stand up. During transit, chickens will lie where they are placed, while pigs, cattle and sheep will try to lie down if the situation permits, but will stand otherwise. Gary C. Smith et al, *Effect of Transport on Meat Quality and Animal Welfare of Cattle, Pigs, Sheep, Horses, Deer, and Poultry*, Dec. 2004, <http://www.grandin.com/behaviour/effect.of.transport.html>. Cattle, for example, will choose to stand while the vehicle is moving. *Id.* Recommendations for transporting poultry actually suggest using containers of sufficient height to allow birds to stand or move suggesting birds normally lie during transport. *Id.* The Twenty-Eight Hour Law was meant to afford animals such as cattle and horses a chance to lie down and rest during a long journey. The same is not necessary for animals such as chickens. Chickens would not suffer in the same way cattle or horses might on a journey without respite. While four footed “beasts” are covered by the Law, fowl are not.

B. The contemporary meaning of “animal” does not include chickens.

The common, contemporary understanding of “animal” has not changed since the enactment of the Twenty-Eight Hour Law. In the common, everyday experience of mankind, chickens are not thought of as animals; rather they are birds in contrast to beasts of the field.

Kansas v. Claiborne, 505 P.2d 732, 735 (Kan. 1973). Persons of common, ordinary intelligence consider a chicken a bird, not an animal. *Id.*; *Lock*, 380 P.2d at 282.

Contemporary courts have found that persons of ordinary intelligence do not consider chickens as “animals.” In *Lock*, decided in 1963, the court was charged with determining the constitutionality of an Oklahoma statute barring “any fight between animals” and instigating “any animal to attack, bite, wound or worry.” 380 P.2d at 280. The defendants were charged with fighting gamecocks. *Id.* They alleged that the statute was not sufficiently definite and certain in describing the conduct prohibited to enable a person of ordinary intelligence to know and avoid violating the law. *Id.* The court acknowledged that, biologically speaking, chickens are animals. *Id.* at 280-281. However, the court pointed to the distinction between “beasts of the field” and “fowls of the air” in its analysis. *Id.* at 281. The court concluded that, although science and biology hold fowl to be “animals,” a man of ordinary intelligence would not consider a rooster an “animal.” *Id.* at 282. The court found that the statute at issue was not explicit or certain, and that persons of ordinary intelligence would have difficulty understanding what it attempted to prohibit. *Id.*

Lock and other similar cases illustrate how the common understanding of the word “animal” and “fowl” have not changed since the enactment of the Twenty-Eight Hour Law. Chickens are considered birds, not animals, by the population at large. *Claiborne*, 505 P.2d at 735. While animals are hairy and four footed, birds are winged with avian characteristics. *Id.* The test for interpreting the meaning of a statute is a person of ordinary intelligence, not the biological or scientific understanding. *Lock*, 380 P.2d at 282. A person of ordinary intelligence, even in today’s world with the proliferation of science, will read the word “animals” to mean “four footed beasts.” *Claiborne*, 505 P.2d at 735.

The Twenty-Eight Hour Law practically applies to the livestock and farming industries, which separate “livestock” from “poultry.” Brochures, newsletters, audits, and handling guides within these industries consistently differentiate between “livestock” and “poultry.” The American Meat Institute Foundation publishes the Recommended Animal Handling Guidelines and Audit Guide to assist companies in reaching animal welfare goals. Temple Grandin, *Recommended Animal Handling Guidelines and Audit Guide 2007 Edition*, American Meat Institute Foundation (2007). This “Animal” handling guide covers only cattle, sheep and pigs. *Id.* The Animal Agriculture Alliance discusses raising healthy “livestock and poultry” on their website. Animal Agriculture Alliance, *Myths & Facts*, http://www.animalagalliance.org/current/home.cfm?Category=Myths_and_Facts&Section=Main (last visited Jan. 5, 2008). Even articles in the Journal of the American Veterinary Medical Association separate livestock and poultry. See *FSIS Tightens Residue Policies, Procedures*, Journal of the American Veterinary Medical Association, Oct. 1, 2001, <http://www.avma.org/onlnews/javma/oct01/s100101e.asp> (Oct. 1, 2001); *Legislation Would Phase Out Some Antimicrobials Used Subtherapeutically in Livestock*, Journal of the American Veterinary Medical Association, April 1, 2002, <http://www.avma.org/onlnews/javma/apr02/s040102b.asp>. Those in the industry, including veterinarians who inspect and treat the animals, in common vernacular separate livestock from poultry. Those affected by the law, in their common, ordinary intelligence and understanding, would not understand poultry to be included within the provisions of the Twenty-Eight Hour Law. If chickens were to now be included within the Law’s requirements and prohibitions, it would not be explicit and certain in what it attempts to prohibit.

Only four state cruelty codes currently protect poultry or fowl during transport: Connecticut, Rhode Island, Wisconsin and Pennsylvania. Conn. Gen. Stat. § 53-249 (West, Westlaw through 2008 Aug. Sp. Sess.); R.I. Gen. Laws 1956, § 4-1-7 (West, Westlaw through 2008); Wis. Stat. § 134.52 (West, Westlaw through 2007 Act 242); 18 Pa. Cons. Stat. § 5511 (West, Westlaw through Reg. Sess. Act 2008-80 Sp. Sess. No. 1 Act 2). Of these states, Connecticut provides a separate cruelty to poultry statute, while Rhode Island and Wisconsin provide separate statutes regulating the humane transport of poultry. Conn. Gen. Stat. § 53-249 (West, Westlaw through 2008 Aug. Sp. Sess.); R.I. Gen. Laws, 1956, § 4-1-7 (West, Westlaw through 2008); Wis. Stat. § 134.52 (West, Westlaw through 2007 Act 242). In order for the states to insure that poultry were covered by the cruelty statutes, the states had to expressly state, in a separate statute, that poultry was covered. This separate statement implies that the legislature believed the common person would not understand that poultry were included under the animal cruelty statutes. The Connecticut cruelty code also separates “birds” and “reptiles” from “animals.” Conn. Gen. Stat. § 53-250 (West, Westlaw through the 2008 Aug. Sp. Sess.). The Rhode Island cruelty code similarly separates “birds” from “animals.” R.I. Gen. Laws 1956, §4-1-9 (West, Westlaw through 2008).

The common meaning of the word “animal” still does not include “chickens,” “fowl,” or “poultry.” It would be improper to stray from the common meaning of the term both at the time the Law was enacted and today. It takes an overwhelming evolution of the meaning of a term for the statutory construction to change. The USDA only recently decided to alter the interpretation of the Twenty-Eight Hour Law to include trucks. The USA adhered to the meaning of the term “vehicle” or “common carrier,” meaning railroad, at the time the Law was passed in 1873 until 2008. *In re: The HSUS: Petition to Apply 28 Hour Law to Truck Transport of Farm Animals*

(Oct. 4, 2005). The USDA chose not to change the interpretation until an overwhelming majority of the animals shipped in the United States were shipped by truck. The common meaning of the term “vehicle” had changed in a significant enough way to change the interpretation. The common meaning of the term “animal” has not changed in an overwhelming, significant or even modest way, thus it would be imprudent to change the interpretation from what Congress intended.

C. Consistent with other federal animal welfare statutes, the Twenty-Eight Hour Law excludes chickens from the definition of “animal.”

The Twenty-Eight Hour Law is an animal welfare statute. Before being passed, the Law was titled House Bill No. 694, to prevent cruelty to animals. Cong. Globe, 42nd Cong., 2d Sess. 4226 (1872). The bill was intended to prevent cruelty to animals while in transit on a railroad or other means of transportation. *Id.* The bill originated with people attempting to ameliorate the suffering of animals. Cong. Globe, 42nd Cong., 2d Sess. 4229 (1872). One senator even commented during the debates that “I have witnessed with my own eyes the torture of these beasts until I turned away because I could not look at it longer.” Cong. Globe, 42nd Cong., 2d Sess. 4236 (1872). The Law was intended to alleviate suffering and insure the welfare of animals.

There are two other significant federal animal welfare laws; the Animal Welfare Act and the Humane Methods of Slaughter Act. The Animal Welfare Act is meant 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” and “to assure the humane treatment of animals during transportation in commerce.” 7 U.S.C. § 2131(1)-(2) (1976). In enacting the Humane Methods of Slaughter Act, Congress found that “the use of humane methods in the slaughter of livestock

prevents needless suffering,” therefore declaring 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. § 1901 (1978). Congress has thus set forth a statutory scheme, including the Twenty-Eight Hour Law, in which animals are to be transported, handled, and slaughtered humanely.

Both the Animal Welfare Act and the Humane Methods of Slaughter Act exclude chickens from the definition of “animals” covered by the laws. “Animal” under the Animal Welfare Act is defined as “any live or dead dog, cat, nonhuman primate, guinea pig, hamster, rabbit, or any other warmblooded animal.” 9 C.F.R. § 1.1 (2008). However, the regulations specifically state that the term “excludes birds.” *Id.* The regulations go on to distinguish between livestock and poultry, which, when intended for use as food, are not covered by the Act. *Id.* Besides explicitly exempting birds from coverage, the regulations further demonstrate the contemporary separation of four footed creatures from fowl.

The Humane Methods of Slaughter Act covers livestock. While a dictionary may define livestock as “any animal kept for use or profit,” which would include chickens raised for food, the regulations enacted pursuant to the Humane Methods of Slaughter Act define it differently. Dictionary.com, <http://dictionary.reference.com/browse/livestock>. Livestock is defined as “cattle, sheep, swine, goat, horse, mule, or other equine.” 9 C.F.R. § 301.2 (2008). Chickens are not covered by this Act.

Consistent with this federal statutory scheme of animal welfare, the Twenty-Eight Hour Law does not include chickens in its definition of “animal.” The language used in the Twenty-Eight Hour Law should be interpreted consistently with the Humane Methods of Slaughter Act to include cattle, sheep, swine, goats, horses, mules and other equine. Interpreting the language differently would create a disconnect between the federal animal welfare laws.

The Twenty-Eight Hour Law serves a dual purpose of humane treatment and food safety that some argue necessitate including chickens under the Law. However, it would not be consistent with the Humane Methods of Slaughter Act to interpret the Twenty-Eight Hour Law to include chickens in its definition of “animals.” The Twenty-Eight Hour Law is intended to insure the humane treatment of animals during transit in order to insure the safety of the food product once the animals are slaughtered. Statements made during senatorial debates concerning the Law evidence this twofold purpose. One senator expressed concern for “the health of the community where [the animals] are to be consumed as food.” Cong. Globe, 42nd Cong., 2d Sess. 4229 (1872). Animals which are mistreated during transit may be injured or diseased, resulting in an adulterated food product. The argument follows, then, that chickens should be covered by the Law to prevent sickness or infection from adulterated birds. However, the improper and inhumane slaughter of livestock is much more likely to cause an adulterated food product than improper transport. The Humane Methods of Slaughter Act is designed to prevent the inhumane slaughter of livestock in order to prevent adulterated food from reaching the public. The regulations enacted pursuant to this Act actually define circumstances in which a food product becomes “adulterated,” including “if it is, in whole or in part, the product of an animal which has died otherwise than by slaughter.” 9 C.F.R. § 301.2 (2008). This Act, also concerned with the health of the community consuming the products produced from the animals covered under the law, possibly more so than the Twenty-Eight Hour Law, does not include chickens. Why would the concern for the health of the community consuming these products be heightened during transport, but not during the actual slaughter and production?

D. The USDA does not include chickens within the coverage of the Twenty-Eight Hour Law.

Although the exclusion of chickens from the Twenty-Eight Hour Law is not as explicit as in the Animal Welfare Act or the Humane Methods of Slaughter Act, the USDA has excluded them from the definition of “animals” under the Law. In the Statement of Policy Under the Twenty-Eight Hour Law, the USDA sets forth amounts of food that are considered sustaining rations during transit. 9 C.F.R. § 89.1 (2008). The amounts are divided by species: cattle, dairy calves, horses, mules, sheep, goats, lambs, kids, and swine. Chickens and fowl are not included within the regulation governing the amount of feed during transit.

Further, the USDA regulations consistently refer to “livestock” rather than “animals.” 9 C.F.R. § 89.1 - § 89.5 (2008). The USDA regulations under both the Animal Welfare Act and the Humane Methods of Slaughter Act separate “livestock” and “poultry.” The Humane Methods of Slaughter Act regulations even define “livestock” as including only cattle, sheep, swine, goats, horses, mules, or other equine. 9 C.F.R. § 301.2 (2008). Interpreted consistently with other USDA regulations concerning animal welfare and livestock, the Twenty-Eight Hour Law does not apply to chickens.

The ordinary, common meaning of the term “animals” both at the time Congress enacted the Twenty-Eight Hour Law and today does not include chickens. The statutory scheme set up by Congress to protect animal welfare also excludes chickens from coverage. The Twenty-Eight Hour Law regulations themselves exclude chickens from coverage. While biology and science may include chickens within the definition of “animal,” common understanding and the law do not. It would require an explicit act from Congress to include chickens within the coverage of the Twenty-Eight Hour Law.

CONCLUSION

The decision of the District Court should be upheld in part and reversed in part. Florida's statute is not preempted by the Twenty-Eight Hour Law and is thus applicable to Mr. Williams. Even if the state statute were preempted, however, the Twenty-Eight Hour Law would not apply to Mr. Williams because chickens are not "animals" under the Law.

DATED: _____

Respectfully submitted,

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The People

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.

Team Member

Date _____

Team Member