Cr. No. 08-1028

IN THE
STATE OF FLORIDINA COURT OF APPEALS
DIVISION THREE

JEFFREY WILLIAMS,

Appellant

v.

THE PEOPLE OF THE STATE OF FLORIDINA,

Respondent

ON APPEAL FROM THE
STATE OF FLORIDINA
DISTRICT OF STINSONIA

BRIEF FOR RESPONDENT

Team 15
Counsel for the People of the State of Floridina

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STATEMENT OF THE ISSUES

I. Under the Federal Twenty-Eight Hour Law, does the term "animals" exclude chickens when the statutory language does not define the term and is therefore ambiguous?

II. Under the Supremacy Clause of the United States Constitution, does the federal Twenty-Eight Hour Law preempt the Floridina anti-cruelty statute barring Williams' conviction under the state statute when the law does not apply or is not expressly or implicitly preempted by federal statute?

STATEMENT OF THE FACTS

Tens of thousands of hens are disposed of each month when they are no longer considered useful to egg farmers. These hens are called spent hens, and their disposal has been a nationwide problem. The hens are thrown away like trash while still alive, loaded into dumpsters and left to die. This behavior is problematic. Environmental and human health hazards such as disease can be spread because of the shear number of birds that are disposed of each month.

Jeffery Williams ("Williams") noticed how spent hens were being disposed of and decided to turn a profit from the plight of these birds. He contacted the USDA and found they would purchase the hens so that they could be used in school lunch programs. The egg farm gave Williams the spent hens for free, as they no longer had to find a way to get rid of the birds and avoided fines relating to the health hazards created.

Williams then packed ten thousand chickens tightly into the back of his tractor trailer and traveled between states delivering and collecting more chickens. Fifteen percent of the chickens that Williams crammed into the back of his truck perished on each trip, although Williams was compliant with the Twenty-Eight Hour Law, 49 U.S.C 80502, by never traveling more than

twenty four hours at a time. The hens suffered while being transported, as they could not move, never received food, water, ventilation or veterinary care.

As Williams was traveling through Floridina on his way to New York, a police officer noticed that Williams had a taillight out. He pulled Williams over. Upon looking in the back of the truck, the officer found a large number of dead chickens. There were live chickens trampling dead chickens. In addition, other chickens were unable to stand upright. Concerned over the well being of the chickens, the officer contacted a local animal control officer. The animal control officer indicated that Williams was in violation of Floridina's Cruelty to Animals Law, 8 FRS § 621, subsections (a) – (d).

Williams argued that his conduct was in compliance with the Twenty-Eight Hour Law before the district court. The State argued that chickens are not animals under the federal Twenty-Eight Hour Law and that the Twenty-Eight Hour Law does not bar prosecution under the Floridina Animal Cruelty Law. The lower court held that Williams violate all forty-five counts of animal cruelty under Floridina law, but incorrectly held that chickens were animals under the Twenty-Eight Hour Law.

ARGUMENT

I. THE TWENTY-EIGHT HOUR LAW DOES NOT APPLY IN THIS CASE, AS THE TERM "ANIMALS" AS USED IN THE STATUTORY LANGUAGE DOES NOT INCLUDE CHICKENS.

The Twenty-Eight Hour Law governs the transportation of animals. In relevant part, it states that truckers "transporting animals. . .may not confine animals in a vehicle or vessel for more than 28 consecutive hours without unloading the animals for feeding, water and rest." The statute fails to define the term "animals"; therefore, whether chickens are included in "animals" and consequently covered by the statute is subject to statutory interpretation. This court must

determine the legislative intent behind the statute in order to reach a decision regarding whether chickens are considered animals under the law.

A. Where the language of animal cruelty statutes is clear, unlike the language of the Twenty-Eight Hour Law, the plain and ordinary meaning of the language is used and courts typically hold that chickens are animals.

This Court should recognize the dissimilarities between the governing statute in this case and statutes in cases where courts have held that chickens are included as animals. It would be inappropriate for this court to view the plain and ordinary meaning of "animals" as conclusive in interpreting the statutory language of the Twenty-Eight Hour Law, as the statute fails to define the term. Accordingly, this Court should conclude that chickens are not protected by the Twenty-Eight Hour law.

When interpreting a statute, a court must determine and effectuate the intent of the legislature. The inquiry begins with the words of the statute, as statutory language is the best indication of intent. People v. Shanklin, 329 Ill. App. 3d 1144, 1145 (Ill. App. Ct. 4th Dist. 2002). The words of the statute should be given their "plain and ordinary meaning." Id. It is common practice for an interpreting court to use a dictionary to determine the ordinary meaning of a statutory term. Levine v. Conner, 540 F. Supp. 2d 1113, 1115 (N.D. Cal. 2008). The American College Dictionary defines "animal" on page 50 as "any animal other than man." "Where the statutory language is clear. . .the plain language of the statute is conclusive and the judicial inquiry is at an end." Molski v. M.J. Cable, Inc., 481 F.3d 724, 732 (9th Cir. 2007). If the words of a statute are clear, the court need not delve father into the intent of the legislature. People v. Baniqued, 85 Cal. App. 4th 13, 20 (Cal. Ct. App. 3d Dist. 2000).

Animal cruelty statutes vary in their use of the word "animal." The majority specify what animals are included or provide a definition of the word. *Overcoming the Inadequacies of*

Animal Cruelty Statutes and The Property-Based View of Animals 38 Idaho L. Rev. 177, 186. Typical definitions include "the whole brute creation," "any living dumb creature," and "all living and sentient creatures (human beings excepted)." Id. Some statutes do not define the term at all. Id. Where the use of "animal" in a statute is coupled with a definition of the word, courts tend to consider chickens to be animals, so long as the definition does not exclude them. In Baniqued, the relevant statute provides that "the word 'animal' includes every dumb creature." 85 Cal. App. 4th at 20. The court held that a rooster of other bird is an animal, as the statute's definition of the word is broad and encompasses "all animals except human beings." Id. at 20, 21. The court noted that the legislature's used of the word "every" is indicative of its intention for "animal" to be broadly construed. Id. at 21. In Brackett v. State, the cruelty statute at issue was clarified by a committee note showing legislative intent to include fowl as "animals." 142 Ga. App. 601, 602. (Ga. Ct. App. 1977). The note states that the statute "covers all animals." Id. It goes on to note that "the public's sensibilities are as likely to be outrages by wanton acts of inhumanity to goldfish. . .and dolphins as when the acts are suffered by more frequently encountered or more valuable animals." Id. The court held that fowls were meant to be included as animals based on the clear message of the committee note. In State v. Huntley, the applicable statute included a provision indicating that "'animal' means any cock, bird, dog, or mammal except man." 1993 Mont. Dist. LEXIS 630 (Mont. Dist. Ct. 2003). The court held that roosters are to be considered animals due to the specific definition within the statute. *See also* People v. Holweg, 1997 Mich. App. LEXIS 3626, 4 (Mich. Ct. App. 1997) ("other animals" defined as "all brute creatures;" court held that cocks were included as animals under statute).

The Twenty-Eight Hour Law is distinguishable from statutes where courts deemed it appropriate to utilize the plain meaning of the word "animal." The Twenty-Eight Hour Law

references “animals” without any definition or clarification. Unlike Baniqued, where the statute provided a broad definition of the term, the statute in this case fails to provide any guidance as to whether “animals” should be construed broadly or narrowly. The present case can be distinguished from Brackett, as the Twenty-Eight Hour Law does not indicate an intent on the part of the legislature to include any and all animals, while the statute in Brackett clearly indicates that all animals are encompassed by the statutory language. Unlike in Huntley, where the statute specifically lists what animals are encompassed by the term used, the Twenty-Eight Hour Law fails to indicate which species are meant by the word “animals.” It would be inappropriate to view the plain and ordinary meaning of the word “animal” as conclusive in the case at hand, as it is not clear and unambiguous as in Baniqued, Brackett, and Huntley. Without a statutory definition of “animals,” a court cannot ascertain the legislative intent behind the law. The use of “animals” within the Twenty-Eight Hour Law remains inconclusive and unclear, and the interpretive inquiry must continue beyond the plain and ordinary meaning of the term.

Conversely, the language of the Floridina Cruelty to Animals Law is clear and the plain and ordinary meaning of “animal” is conclusive. The statute states that “‘animal’ means all living creatures, including birds, regardless of their function or use by humans.” 8 FRS § 620(1). This statutory definition is similar to that in Huntley; therefore, the Floridina statute encompasses chickens.

One could argue that the definition of animal as set forth by The American College Dictionary clearly includes chickens. This is irrelevant, as the statutory language of the Twenty-Eight Hour Law is ambiguous. If “animals” in the statute did not have two reasonable interpretations, then chickens would clearly be animals under the dictionary definition; however, because two reasonable interpretations exist, the court is required to look beyond the dictionary

definition to other sources of legislative intent which will show that chickens are not to be included as animals.

Should this court determine it appropriate to utilize the plain and ordinary meaning of "animal," rather than concluding that the statutory language is ambiguous, additional analysis would still be necessary. Reputable dictionaries disagree on the definition of the word; therefore, there are more than one reasonable interpretation of the word itself regardless of statutory use. As previously noted, The American College Dictionary defines "animal" as "any animal other than man," while The Random House Unabridged Dictionary defines "animal" as "a mammal, as opposed to a fish, bird, etc." If the definition of a word depends on the dictionary used, its use as statutory language clearly creates an ambiguous statute.

B. Where the language of animal cruelty statutes is ambiguous, like that of the Twenty-Eight Hour Law, interpreting courts look beyond the plain and ordinary meaning of the language and generally hold that chickens are not animals.

This Court should recognize the similarities between the language of the Twenty-Eight Hour Law and that of statutes that courts have deemed to encompass chickens. Due to the ambiguous nature of the use of "animals" in this case, this Court should look beyond the plain and ordinary meaning of animals and consider other relevant factors to determine the legislative intent behind the Twenty-Eight Hour Law. The legislative history, purpose, canons of statutory construction and public policy behind the statute indicate an intent to exclude chickens as animals.

An ambiguous statute is one that can be "reasonably interpreted in two different ways." People v. Holloway, 177 Ill. 2d 1, 8 (Ill. 1997). "Where a statute is ambiguous and the legislative intent cannot be ascertained from the plain and ordinary meaning of its language," the court must look beyond that meaning to determine what was intended by the framers of the statute.

Shanklin, 329 Ill. App. 3d at 1145. The plain meaning of statutory language is insufficient to show legislative intent where that language is unclear.

When a statute is not clear regarding its use of "animal," courts typically determine that chickens are not included in the statute's coverage. In Lock v. Falkenstine, the statute references "animals," and "any animal." 380 P. 2d 278, 280 (Okla. Crim. App. 1963). The court opined that biologically, "every living creature is presumed to be of the animal species," but, because the statute at issue failed to define "animals," gamecocks are not to be included as animals. The Lock court questioned why the legislature did not define the word, as other legislatures have done, and stated that prohibitions ought to come from the legislature. Id. at 283. If birds were to be covered by the cruelty statute, "animals" should have been defined accordingly. Id. In State of Kansas v. Claiborne, the court concluded that the animal cruelty statute at issue did not apply and should be construed to exclude gamecocks as animals. 211 Kan. 264, 268 (Kan. 1973). Without clear legislative intent, and with two reasonable interpretations of "any animal," the statute is ambiguous. It was acknowledged that "biologically speaking, a fowl is an animal." Moreover, the Claiborne court opined that chickens are generally considered birds rather than animals. Id. Expert evidence indicated that "persons of common intelligence would consider a chicken a bird not a hair-bearing animal." Id. In State v. Stockton, where gamecocks were excluded from the term "animal," the court was "unable to find . . . a clear indication of an intent on the part of the legislature to include a gamecock in the category of animals." 85 Ariz. 153, 156 (Ariz. 1958). The court in Stockton recognized that "biologically speaking, there can be no doubt that birds or fowls are animals." Id. at 155. The court went on to say that "where the [legislative] intent is manifest in the language of a statute, the same may be and has been held to be true in the field of law." Id. Where the legislative intent is clear, it is appropriate to consider fowl as animals, but

without clear manifestation of intent, the language is ambiguous and the ordinary meaning does not control. Accordingly, chickens should be excluded as animals unless there is a clear intent indicating otherwise. Any mention of the word "animal" in any statute can be interpreted to include all living creatures, based on its plain and ordinary meaning; therefore, without clear legislative intent indicating that the word is to be interpreted in another way, the statute should be construed to excluded chickens and other birds.

The Twenty-Eight Hour Law's statutory language is similar to that of statutes that are ambiguous; therefore, this case should be decided in accord with those in which courts have held that chickens are not animals. Like in Lock, where the statute failed to explicate which species were included as "animals," the Twenty-Eight Hour Law does not list those animals that the statute was meant to protect. Under Lock, it cannot be said to include chickens. Like that in Claiborne and Stockton, the language of the Twenty-Eight Hour Law lacks a definition that indicates an intent to include fowl as animals; therefore, chickens cannot be considered animals in this case. There is no indication that the legislature intended for fowl to be protected by the statute. In order for a cruelty statute to encompass chickens, the legislature must expressly indicate through statutory language that the intent of the statute was to include fowl.

C. This court should find that chickens do not constitute animals under the Twenty-Eight Hour Law, as canons of statutory construction, as well as the legislative history, purpose, and public policy behind the statute support that conclusion.

Factors other than the plain and ordinary meaning of "animals" indicate that the legislature intended to exclude chickens and other birds from the Twenty-Eight Hour Law. This Court should recognize that the legislative history, purpose, and public policy of the statute comport with the decision that chickens are not animals. Additionally, under the canon of

ejusdem generis, the Twenty-Eight Hour Law only protects four-legged mammals. The Court should find that chickens are not animals under the statute.

When an ambiguous statute is analyzed, the plain and ordinary meaning does not control, and the court must determine legislative intent through other factors. Once it is determined that statutory language is unclear and can be interpreted in two ways reasonably, the court can consider "the purpose of the law, the evils the law was designed to remedy, and legislative history to discern legislative intent." Shanklin, 329 Ill. App. 3d at 1146. Additionally, canons of statutory construction should be consulted to ensure that the legislative intent set forth by the legislative history and other factors has not been negated. Levine, 540 F. Supp. 2d at 1120.

1. Legislative history and canons of statutory construction are relevant factors for consideration when analyzing an ambiguous statute.

Courts consider the legislative history of a statute in determining the legislative intent behind unclear statutory language. Some legislatures have expressly indicated which birds are and are not to be included as animals. Savage v. Prator, 921 So. 2d 51, 53 (La. 2006). In Savage, the relevant Louisiana statute excluded fowl from the definition of animals; however, it indicated that birds such as cockatoos, parrots, and sparrows were included as animals. Id. Chickens are excluded under that statute. In Claiborne, the court indicated that cruelty to animal statutes have typically been aimed at the "protection of the four-legged animal, especially beasts of the field and beasts of burden." While courts have produced inconsistent result regarding whether fowl are animals, legislative trends indicate that chickens and similar birds are excluded from the definition of animals.

The Twenty-Eight Hour Law's language was altered from "cattle, sheep, wine, or other animals" to "animals." The prior language indicates that the original legislative intent behind the statute was to provide protection to four-legged animals, like that in Claiborne. Fowl were not

intended to be protected. It could be argued that the revision shows an intent to protect all animals, such as fowl; however, if the purpose of the revision was to protect birds, the legislature would have expressly stated that fowl were animals. Unlike the statute analyzed in Savage, the Twenty-Eight Hour Law does not explicate what is meant by the word "animals." Without such a specific revision, an interpreting court can only look to the ambiguous "animals" or to the original language referencing four legged-animals to determine legislative intent behind the Twenty-Eight Hour Law.

Once legislative history has been considered, the interpreting court should look to canons of statutory instruction to "ensure that the [legislative] intent. . .has not been negated." Levine, 540 F. Supp. 2d at 1120. The most relevant canon is that of *ejusdem generis* which "provides that where general words follow an enumeration of specific items, the general words are read as applying to other items akin to those specifically enumerated." Id. General statutory language cannot be extended to any item not specified by the legislature.

Under *ejusdem generis*, "cattle, sheep, swine, and other animals" means cattle, sheep, swine, and other similar animals. In Clay v. New York C. R. Co., the court held that the Twenty-Eight Hour Law did "not apply to poultry." 224 AD 508, 512 (N.Y. 1928). The court concluded that "birds are not animals" under the interpreted statute. Id. The words "other animals" were not considered to include birds, as they are dissimilar to cattle, sheep and swine. A chicken is not akin to a sheep or pig; therefore, the statute does not protect chickens.

The Twenty-Eight Hour Law has been previously interpreted to not apply to birds, under the canon of *ejusdem generis*, therefore, the statute should be construed similarly in this case. The court in Clay utilized *ejusdem generis* to conclude that chickens were not intended to be encompassed in the statutory use of "animals." While the language of the Twenty-Eight Hour

Law has been revised since the Clay court made their decision, the decision in Clay supports the fact that the legislative history of cruelty statutes indicates that chickens are not to be considered as animals. The revision of the statutory language cannot alter the history of the statute itself; therefore, the legislative history has not been negated.

2. The purpose for which a statute was enacted, as well as the problems it was designed to solve, should be considered when a statute is interpreted.

Interpreting courts should consider the purpose and the "evils the law was designed to remedy" in determining the intent behind the statute at issue. Shanklin, 328 Ill. App. 3d at 1146. Animal cruelty statutes have several purposes. The court in Chesapeake and Ohio Ry. Co. v. American Exchange Bank set forth three purposes behind statutes governing the transportation of animals. 92 Va. 495, 501-502 (Va. 1896). The first purpose is to prevent "cruelty and injury to animals that were shipped long distances. . .by requiring that they should be unloaded, watered, fed, and allowed to rest at stated intervals." Id. at 502. The statute in Chesapeake covers "cattle, sheep, swine, or other animals." Id. at 501. The court suggested that the regulation was a humane one intended to keep animals "which would suffer in like manner with cattle, sheep, and swine for want of food, water, or rest, whilst being shipped long distances, are within its provisions." Id. at 502. The second purpose of transportation statutes is to "secure the people of the country from consuming diseased animal food." Id. Statutes indicating that animals must be removed from trucks and other vehicles for food, water, and rest are in place to protect the health of the public. The final purpose is to "prevent loss to the owners of live stock, which would result from it being carried long distances . . . without food, water, and rest."

The statutory language of the original Twenty-Eight Hour Law is identical to that of the statute in Chesapeake; however, the purposes set forth by the Chesapeake court should not be applied to this case in their entirety. The Twenty-Eight Hour Law's primary purpose, like the

statute in Chesapeake, is to prevent cruelty to animals; however, the suggestion that "other animals" includes any animal being shipping long distances should not be applied to this case. The canon of *ejusdem generis*, as previously discussed, requires that the statute in Chesapeake only applies to cattle, sheep, swine, and other four-legged animals such as horses and mules, and not to birds like chickens. This is supported by the court's suggestion in Chesapeake that the statute exists to protect animals that "would suffer in like manner as cattle, sheep, or swine." Chickens cannot be said to want for food or water in the same way as a larger, four-legged mammal that is entirely dissimilar to a bird. Another purpose of the statute in Chesapeake and of the Twenty-Eight Hour Law is to keep the public from ingesting unhealthy food. The chickens transported by Williams were intended for human consumption; however, ensuring that unhealthy meat is not consumed is simply a statement of the reasoning behind the requirement that animals be unloaded if transported for more than 28 hours. It is not a reason why the Twenty-Eight Hour Law should be construed to include chickens. Finally, the third purpose behind transportation statutes is entirely irrelevant in this case. Cruelty statutes relating to transportation exist partly to protect animals, which are considered property, from damage. In the present case, the chickens being transported are spent hens, and do not belong to any person. Without an owner, an animal cannot be property.

3. Public policy should be considered by a court examining unclear statutory language.

Interpreting courts should consider the public policy behind a statute while determining the legislative intent behind statutory language. In State v. Buford, the court opined that to construe the relevant cruelty statute to include a prohibition on cockfighting would "open up many other activities to prosecution, thought they are not within [the statute's] spirit." 65 N.M. 51, 58 (N.M. 1958). The court concluded that the statutory language only applied to four-legged,

work animals because the statute lacked a definition of the term being interpreted. To extend the statute to animals that were not expressly indicated as being encompassed by the statutory language would create a flood gates problem. If the statute is extended to apply to chickens, others can make arguments that the statute applies to any animal, regardless of whether it is in the spirit of the statute. If Williams' is successful in his argument that the Twenty-Eight Hour Law includes chickens, the intent of the legislature would effectively be irrelevant, as the court will have indicated that any animal is protected by the statute. This is problematic, because criminal prohibitions and regulations regarding animal cruelty are not to be set forth by the judiciary. An interpreting court must act in accordance with the legislative intent of the statute being interpreted.

II. THE SUPREMACY CLAUSE OF ARTICLE IV CLAUSE 2 OF THE UNITED STATES CONSTITUTION DOES NOT BAR ENFORCEMENT OF STATE LAW 8 FRS §621.

This Court must uphold the District Court of Floridina's decision that the Twenty-Eight Hour Law, 49 U.S.C. §80502, does not preempt enforcement of the Floridina Animal Cruelty Law, 8 FRS §621, when Twenty-Eight Hour Law is inapplicable to Williams. If the Twenty-Eight Hour Law is applicable, it does not preempt enforcement of the Floridina Animal Cruelty Law because preemption is neither expressed nor implied.

Historically, the Twenty-Eight Hour Law is only applicable to railcars and not tractor-trailers. The Department of Agriculture stated in 1995 that the Twenty-Eight Hour Law only applied to railcars. In addition to the Department of Agriculture's statement, the Twenty-Eight Hour Law has not been applied, in any case, when a tractor-trailer was the mode of transportation. Even if this Court determines something different than the Department of Agriculture, and applies the Twenty-Eight Hour Law to tractor-trailers, the Twenty-Eight Hour

Law neither expressly nor implicitly preempts application of Floridina's Animal Cruelty Law under the Supremacy Clause of the United States Constitution.

A. **The Twenty-Eight Hour Law does not apply to tractor trailers, therefore state and federal laws do not conflict, and the lower court's decision should be upheld.**

The Twenty-Eight Hour Law only applies to railcars; therefore, the Supremacy Clause is not applicable. 49 U.S.C. § 80502 was created in 1994 as a replacement to 45 U.S.C. 71. According to the historical and statutory notes to the legislation, the statute was amended to both eliminate unnecessary words and to add a monetary fine element to the statute. 49 U.S.C. § 80502 (1994). Specifically, the changes affecting the case at bar state, the words "rail carrier, express carrier" are substituted for "railroad, express company, and car company" for consistency in the revised title." 49 U.S.C. § 80502 (1994).

In 1995, the Department of Agriculture, who is charged with enforcing the Twenty-Eight Hour Law, said in the Federal Register, "The Twenty-Eight Hour Law does not apply to transport by truck." Tuberculosis, Brucellosis, and Paratuberculosis in Cattle and Bison; Identification Requirements, 60 Fed. Reg. 48632-01 (Sept. 19, 1995) (codified at 9 CFR Parts 50, 51, 77, 78, and 80). The Department of Agriculture was discussing the sealing of trucks for transportation of cattle to ensure that tuberculosis was not spread to other cattle. Id. A commenter asked "that we add to the regulations definitions for "moved directly" and "sealed vehicle" to clarify that these stipulations do not conflict with the requirements of the Twenty-Eight Hour Law. We have made no changes based on this comment… The Twenty-Eight Hour Law does not apply to transport by truck." Id. The Statement of Policy for the Twenty-Eight Hour Law, discusses only railcars, it makes no mention of regulations for tractor-trailers. *See*, 89 C.F.R. § 89.1 (2008).

Because the Twenty-Eight Hour Law does not apply to tractor-trailers, Williams is able to be convicted under the Floridina Animal Cruelty Law. Application of the Supremacy Clause is unnecessary. Even though the lower court came to the correct decision, it clearly applied inapplicable law when evaluating the Supremacy Clause in considering the issue of preemption. Because of the clear deviation from the law, and that the proceeding is under the *de novo* standard of review, this Court should find that the lower court's holding was correct in its result, but incorrect in its application.

B. Alternatively, if the Supremacy Clause is applied, the Twenty-Eight Hour Law does not preempt enforcement of the Floridina Animal Cruelty Law.

The Supremacy Clause which allows for the preemption of federal law over state issued law states,

> 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. VI cl. 2. The clause which was first tested in Marbury v. Madison has remained an instrumental part of federal law making and United States jurisprudence. Rice v. Santa Fe Elevator Corp. states "we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." 331 U.S. 218, 330 (1947). Preemption is a fundamental question of legislative intent. English v. General Elec. Co., 496 U.S. 72, 78-79 (1990). The federal government can preempt state action when expressly stated in legislation. English, 496 U.S. at 79. While it is fundamental that federal law preempts state law, the state law must only yield when expressed by the legislation or implied by the effects of the legislation. Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 372-373 (2000). In other words, if the federal legislation explicitly states

in the legislation that the state governments cannot legislate in a specific area of law, then the states would be preempted by the federal government because of the Supremacy Clause. Here, the Twenty-Eight Hour Law has no such language.

> [(a)] transporting animals from a place in a State … of the United States through or to a place in another State . . ., 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.

49 U.S.C. 80502. Since there is no language addressing preemption in the statute, the Court must determine if the federal law implies that state law should be preempted. There are three tests to show whether federal law implicitly preempts state law: conflict preemption, obstacle preemption, field preemption. Hillsborough County, Fla. v. Automated Med. Lab., 471 U.S. 707, 713 (1985). Williams, therefore, cannot avoid conviction by express preemption under the Floridina Animal Cruelty Law because it is clear that there is no express language in the Twenty-Eight Hour Law that preempts the state law.

1. The Floridina Animal Cruelty Law does not conflict with the Twenty-Eight Hour Law.

In order to succeed under conflict preemption, Williams must show that compliance with the Floridina Animal Cruelty Law is impossible because of the Twenty-Eight Hour Law. Fla. Lime & Avocado Growers, Inc. v. Paul 373 U.S. 132, 142-143 (1963); Hillsborough County, 471 U.S. at 713. Fla. Lime provides that when compliance with both federal and state regulations is physically impossible to complete, conflict preemption exists. 373 U.S. at 142-143. Conflict preemption exists to prevent states laws from restricting the application of its laws as it relates to the Commerce Clause. Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520, 529

(1959). If the state law were to conflict with federal commerce powers, the Supremacy Clause would require the federal law to be followed. Hillsborough County, 471 U.S. at 713.

Courts look to the specific language of the statute to determine whether there is conflict between the two laws. *Id.* at 714. "The test of whether both federal and state regulations may operate, or the state regulation must give way, is whether both regulations can be enforced without impairing the federal superintendence of the field, not whether they are aimed at similar or different objectives." Fla. Lime, 373 U.S. at 142. For example, in Fla. Lime, the court held that a picking date schedule that was adopted by Florida did not conflict with a federal marketing law that made eight percent oil content in the avocados mandatory. Id. at 141. The Florida avocados were picked prior to eight percent oil content because they were a different variety than California avocados which the oil content test was based upon. Id. at 140. The Court held that because the Florida avocados reached eight percent oil content while "in a prime commercial marketing condition" that it did not interfere with the federal law. Id.

Like Fla. Lime, the Floridina Animal Cruelty Law and the Twenty-Eight Hour Law can both be applied to Williams without conflict. The Twenty-Eight Hour Law simply defines the time that animals can be transported without food and water. 49 U.S.C. § 80502. The Floridina Animal Cruelty Law says that a person is guilty of animal cruelty if the animal is denied specific humane standards.

> "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.

9 FRS § 621. The Floridina statute reflects the same congressional policy enacted in the Twenty-Eight Hour Law, the prevention of animal cruelty.

The Twenty-Eight Hour Law does not address exercise, room to lie down, or ability to spread limbs; therefore the Floridina Animal Cruelty Law can apply without coming into conflict with the federal law. Any person could violate either law, neither law, or both laws. For instance, if Williams kept the chickens in the truck for thirty hours without the proper food and water, he could be found guilty of both the Animal Cruelty Law and the Twenty-Eight Hour Law. However, the state could find that Williams acted humanly to the chickens, even though there was a violation of the federal law. In that case, Williams would be in violation of the federal statute alone. Lastly, like here, Williams could mistreat the chickens without going over twenty-eight hours and be convicted under state law. Because the Animal Cruelty Law and the Twenty-Eight Hour Law do not conflict with each other, conflict preemption does not exist; hence, this Court should uphold the lower court's decision.

2. The Floridina Animal Cruelty Law does not stand as an obstacle to the Twenty-Eight Hour Rule.

In order for Williams to succeed under conflict preemption, he must show that the Floridina Animal Cruelty Law creates an obstacle to application of the Twenty-Eight Hour Law. The court must look to the legislative intent of the law, and determine if the state law substantially frustrates application of the federal law. Hines v. Davidowitz, 312 U.S. 52, 67 (1941); *Crosby*, 530 U.S. at 373. Hines held that if a state law is an obstacle to the accomplishment and execution of a federal law, then the state law would bow to the federal law. 312 U.S. at 67. The courts look to the federal statute's purpose and effects to determine if there is a substantial obstacle created by the state law. Crosby, 530 U.S. at 373.

Obstacle preemption is similar to expressed preemption, except that instead of looking to the expressed language, the court must look to see if the legislature intended the law to be preemptive. Rice, 331 U.S. at 230. If so, it must be clear and have a manifest purpose. Id. For

example, Crosby found that a Massachusetts state law, allowing for certain trade with Burma, undermined the intended purpose and effect of the federal law. 530 U.S. at 373. If there is nothing in the legislative history or legislative language that would imply that a state law would stand as an obstacle to the implementation of the federal law, the Court will "accept the reading that disfavors pre-emption." Bates v. Dow Agrosciences LLC, 544 U.S. 431, 499 (2005).

Floridina's Animal Cruelty Law does not substantially frustrate application of the Twenty-Eight Hour Law. The purpose of the Twenty-Eight Hour Law applies to the humane treatment of animals, specifically during transportation. S. Pac. v. U.S., 171 F. 360, 361 (9th Cir. 1909). The Floridina Animal Cruelty Law was drafted to prevent animal cruelty in general. The commentary on 49 U.S.C. § 80502 discusses simply the time restraint, and what is required during rest periods. *See*, 49 U.S.C. § 80502. As Hines explains, if the state law does legislate in an area that is legislated by the federal government, the state law will be preempted. 312 U.S. at 68 n. 17. Hines discussed federal laws controlling aliens and that state laws could not also control aliens, if that area was covered by the federal statute. Id. Here, it is clear that the Twenty-Eight Hour Law covers time constraints alone and not all areas of animal cruelty. The Floridina law covers other situations where cruelty to animals arises.

Hines and the case at bar are distinguished from a case like Crosby. The Massachusetts law in Crosby frustrated and undermined the application of the federal law by allowing trade when it was specifically. The Floridina Animal Cruelty Law speaks to the conditions of the transportation, whereas the Twenty-Eight Hour Law, simply speaks to the amount of time animals may be transported without food and water. Because the two laws are not in conflict and can work together, the Twenty-Eight Hour Law cannot preempt the Animal Cruelty Law. This Court should uphold the lower court's ruling, and Williams should be guilty under 8 FRS § 621.

3. The Floridina Animal Cruelty Law is not preempted by the Twenty-Eight Hour Law because the Twenty-Eight Hour Law does not represent a field of law exclusively maintained by the federal government.

For Williams to show that the Twenty-Eight Hour Law is field of law exclusively governed by federal law, he must show that the federal interest either leaves no room for the state regulation, or is so dominant that it can be assumed it preempts enforcement by state laws in the same field. Hillsborough County, 471 U.S. at 713; *Rice*, 331 U.S. at 330. Once field preemption is found to exist, it will prevent any and all state laws applied in that area. Hillsborough County, 471 U.S. at 713. However, when there is no clear congressional intent for the federal government to occupy the entire field, then state laws can co-exist. Exxon Shipping Co. v. Baker, 128 S.Ct. 2605, 2609 (2008).

Exclusive federal interest is best shown through immigration. Immigration is an area of law where the federal government has exclusive control. Hines, 312 U.S. at 62. As Hines explains, "[w]hen the national government by treaty or statute has established rules and regulations touching the rights, privileges, obligations or burdens of (a particular field), the treaty or statute is the supreme law of the land. No state can add to or take from the force and effect of such treaty or statute." Id. Even if the government has control of a certain field of law, the federal government can choose to take regulatory control over the domain, share the task with the states, or adopt the state scheme as federal policy. Rice, 331 U.S. 230.

All fifty states have animal cruelty legislation. H.R. Rep. No. 397, 106th Cong., 1st Sess. 3-4 (1999) (1999 House Report); *see*, Ala. Code § 13A – 11 – 14 (1975) (Cruelty to Animals); Fla. Stat. Ann § 828 (1986) (Animals: Cruelty; Sales; Animal Enterprise Protection); N.C. Gen. Stat. § 19A – 45 (1979) (Animal Cruelty Investigators); S.C. Code Ann. § 47 – 1 – 50 (1992) (Cruelty to Animals); Wyo. Stat. Ann. § 6 – 3 – 203 (1977) (Cruelty to animals; penalties;

limitation on manner of destruction). If the congressional intent was to have exclusive control over the area of animal cruelty, then there would be a complete scheme of regulation in the area of animal cruelty. Hines, 312 U.S. at 66. However, because of the legislative history of both the Twenty-Eight Hour Law and state created animal cruelty laws, it can be reasonably inferred that the federal government does not have exclusive control over the field.

Animal cruelty law has historically been recognized as a police power of the states, with the exception to transportation and slaughter. DeHart v. Town of Austin, Ind., 39 F.3d 718, 722 (7th Cir. 1994). Even though Williams' violation was in the course of transportation, his conviction fell under animal cruelty law generally. As Kerr v. Kimmell held, "states have a legitimate interest in the humane treatment of animals." 740 F. Supp. 1525, 1529 (D. Kan. 1990).

Williams may try to show that People v. S. Pac. Co. offers support that the federal law preempts state law, however the case at bar is distinguishable from the California case because the defendant in California was found guilty for not supplying adequate water and food to the animals. 25 Cal. Rptr. 644 (Cal. Ct. App. 1962). This Court does not need to be persuaded by the California court. Williams was convicted of cruelty to animals because the chickens were shipped in an over packed truck, not because they were denied food and water, like the defendant in People v. S. Pac. Co. Other courts have ruled in direct divergence with the California Court. Hogg v. Louisville & N.R. Co. held "[t]he 28-hour law, while prescribing fixed duties to live stock, is not a grant of privilege to the carrier authorizing it to confine the stock for the period of time therein mentioned, irrespective of the question of negligence in so doing. The question of negligence as to such confinement is still left as at common law, notwithstanding the statute." 127 S.E. 830, 832 (Ga. App. 1925).

As a matter of policy and animal welfare, this Court should find that the Floridina Animal Cruelty Law does not tread on the field of the Twenty-Eight Hour Law. If the court finds against Floridina, then it allows for chickens to continue to be packed tightly into tractor-trailers. Until the federal government expressly or clearly implies that only the Twenty-Eight Hour Law may be followed while transporting chickens through the several states, then the law of Floridina, and other states, should be applied. Williams' cruelly packed chickens into his truck with very little room to lie down or spread their limbs, because this violates Floridina law, and is not preempted by federal law, Williams' conviction should be upheld.

CONCLUSION

For the foregoing reasons, this Court should affirm the decision of the lower court and find Williams guilty; however, we respectfully request that this Court do so under the Floridina cruelty statute, rather than the Twenty-Eight Hour Law, as it is inapplicable.

Respectfully submitted,

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