Statement of the Case

A. Statement of Facts

Appellant/Cross-Respondent Jeffrey Williams, is the sole proprietor of Truckin Chicken, a company that transports "spent hens" in large tractor-trailer trucks. R. at 1. "Spent hens" are live chickens that were formerly used in egg production and can no longer lay eggs. *Id*. Williams collected the birds from farmers at various points along the East Coast and sold them to the United States Department of Agriculture ("USDA"). *Id*. USDA then provides the spent hens for food in school lunch programs. *Id*. Neither the farmers nor Williams is compensated for the chickens that Williams takes. R. at 2.

Williams never drives more than twenty-four hours between his starting point and his destination. *Id*. Williams does not stop during any of his transportation trips. *Id*. Williams does not provide the chickens with any food water or veterinary care during transit. Approximately fifteen percent of the chickens from each trip are dead upon arrival at the destination. *Id.*

In 2008, while transporting chickens to New York, Williams was stopped by a Floridina highway patrol officer. *Id*. Upon inspection of the chicken cargo, the patrol officer found a large number of dead chickens, live chickens standing on top of dead chickens and chickens that were unable to stand upright. *Id*. After consulting with the local animal control officer, the highway patrol officer affirmed that the condition of the chickens were a violation of state law. *Id*. The highway patrol then arrested Williams for cruelty to animals in violation of Floridina's Cruelty to Animals Law, 8 Floridina Revised Statutes, section 621. *Id*.

B. Procedural History

This case arose in 2008, when Williams was stopped and arrested in Floridina by a highway patrol officer who discovered that the conditions under which Williams was transporting chickens was in violation of Floridian's Cruelty to Animals Law, 8FRS §621. R. at 2. Williams was charged with forty-five counts of cruelty to animals. *Id*. Williams stipulated to all of the above mentioned facts. *Id*. Williams rose single defense to the forty-five counts of cruelty to

animals, asserting that the state of Floridian could not prosecute him because he was in compliance with the federal Twenty-Eight Hour Law, 49 U.S.C. § 8050. *Id*. The state argued that (1) the Twenty-Eight hour Law does not bar prosecution under the Floridina anti-cruelty law and (2) even if the federal law did preempt the Floridina state law, chickens are not "animals" within the coverage of the federal Twenty-Eight Hour Law. R. at 2-3. The court for the state of Floridina, district of Stinsonia held that (1) chickens are "animals" under the Twenty-Eight Hour Law, and (2) the Twenty-Eight Hour Law does not bar prosecution under Floridina's anti-cruelty law. R. at 3. Williams was convicted of on all forty-five counts. R. at 11. Williams appealed to the State of Floridina Court of Appeals, division three, arguing that the Twenty-Eight hour Law preempts application of the state anti-cruelty law, and that application of the state law violates the Supremacy Clause of the Unites Sates Constitution. The state cross-appealed the district court's ruling that the transport of chickens was covered by the Twenty-Eight Hour Law. The appellate court limited its review to two questions: (1) Does the term "animals" in the Twenty-Eight Hour Law include chickens? and (2) Does the Supremacy Clause of the U.S. Constitution car Williams' conviction under the Floridina anti-cruelty statute because the state anti-cruelty law

SUMMARY OF THE ARGUMENT

Appellant cannot be subject to the Federal Twenty-Eight Hour Law, because the law applies to the transport of “animals” and chickens do not fall within the definition of “animal.” When construing the meaning of words in a statute the inquiry starts with the plain meaning of the word on the face of the statute. If the statute on its face is unambiguous the inquiry ends. If the plain meaning is ambiguous then the inquiry turns to the legislative intent. In examining the legislative intent the context, purpose and statutory scheme are taken into account. In the instant case the plain meaning of the statute includes not only the scientific meaning of the word “animal,” but it must also include the ordinary usage of the word. The word “animal” is ordinarily used to indicate four-footed mammals, such as sheep, cattle and swine. In the everyday experience of man birds, such as chickens, are rarely though of as “animals.”

Even if the court holds that the statute is ambiguous, the legislative intent indicates that Congress did not intend to encompass chickens with the Twenty-Eight Hour Law. This Law was recently amended in 1994, omitting “cattle, sheep and swine” in leu of “animals.” The history of the statute makes it clear that this change was not meant to indicate an expansion of what the statute was intended to cover, but was made to increase the ease of reading and eliminate extra words.

Also, looking at the context in which this statute was written, indicates that only four-footed mammals were intended to be covered. Statutes regarding the protection or humane treatment of “animals” date back to the 1800's and consistently refer to “animals” as including livestock also know as four-footed mammals.

In addition, looking at the statutory scheme of modern animal protection statutes, it is clear that the two statutes that refer to livestock, the Twenty-Eight Hour Law and the Humane Methods of Slaughter Act, apply only to four-footed mammals. The two statutes are very similar in purpose, to create human conditions for animals that are kept, raised and transported for food purposes. The two statutes also use very similar language, such as referring to animals

as livestock. The Humane Methods of Slaughter Act specifically excludes poultry. By comparing the two statutes one can infer that Congress also intended to exclude poultry/chickens form the Twenty-Eight Hour Law.

Lastly, the third major modern animal protection law, the Animal Welfare Act, was amended more than twenty years before the Twenty-Eight Hour Law to expand the definition of "animal" to "all warm blooded animals." Congress' failure to expand the definition of "animal" in the Twenty-Eight Hour Law indicates an intent to exclude certain warm blooded creatures from this statute.

Because animal does not encompass chickens, Appellant is not subject to the Twenty-Eight Hour Law. Even if Appellant is subject to this law, he is also subject to the Flordinia state law, because the state anti-cruelty law is not preempted by the federal law.

When Federal Law is seeking a minimum standard, more precise State Laws can coexist with Federal Statutes. Because Congress did not intend to preempt State Law, and because the laws can coexist, the Federal Twenty-Eight Hour Law does not pre-empt Floridina's Anti-Cruelty to Animals Law. The Twenty-Eight Hour Law expressly governs the interstate transportation of animals, but there is not an express intent to pre-empt State Laws which may also govern the matter.

The police power of the States has historically included regulation of animals. Because of the basic assumption that Federal Acts not interfere with State's police power, the Supreme Court is reluctant to infer pre-emption. In the instant matter, the District Court deemed that "facially, [Defendant] Williams is in compliance with the federal law [Twenty-Eight Hour Law], and there is no claim to the contrary." R. at 7. Thus, there is no actual conflict between the State and Federal Laws. Moreover, the State and Federal anti-cruelty laws are generally in accordance with a shared purpose of lessening unnecessary suffering of animals. With a shared purpose and absent any conflict, the Federal Twenty-Eight Hour Law and the Floridina Anti-Cruelty Law

demonstrate the capacity to coexist. The Federal Twenty-Eight Hour Law is meant only to provide a minimum standard of humane treatment of animals. Whereas field pre-emption involves areas of law that were the traditional or exclusive responsibility of the Federal Government (i.e. foreign affairs, immigration, alienage, and enormous oil tankers in a crowded port), the humane treatment of animals began with State enactments of Anti-Cruelty Laws. In this way, the humane treatment of animals began with the States and continues as a traditionally-held State police power. Without an express or implied declaration of federal pre-emption, States are compelled by federalism and driven by police power to enact laws. As such, the Floridina Anti-Cruelty Law is not pre-empted by the Federal Twenty-Eight Hour Law.

ARGUMENT

I. The Term "Animal" as Used in the Twenty-Eight Hour Law, 49 USC § 80502 Does Not Specifically of Impliedly Include birds Chickens, and Congress Did Not Intend to Encompass Chickens in This Law, Therefore it Does Not Apply to Williams' Transportation of Chickens Within Floridiana or Across State Lines.

To be subject to the Twenty-Eight Hour Law, Appellant must establish that the statute included in its definition of "animals" chickens. In construing a statute or regulation, a court begins by reviewing its language to ascertain its plain meaning. *Am. Airlines, Inc. v. United States*, 2008 U.S. App. LEXIS 25813 (Fed. Cir., December 22, 2008, Decided). When a statute is not clear on its face or does not speak directly to an issue, the interpretation provided by the relevant agency's regulations warrants deference. *Id*. When the statutory text is clear, we need look no further. *Id*. However, when the language of a regulation is ambiguous or susceptible to more than one plausible reading, the court defers to the legislative intent, including the context of the statue, the purpose of the statute and the statutory scheme. *Id*. If the intent of Congress is clear, that is the end of the matter for the court. *Id*. In the instant case, neither the plain language, nor Congress' intent, include chickens within the definition of "animal" as used in the Twenty-Eight-Hour Law.

A. The Plain Language of the Twenty-Eight Hour Law Does Not Include Chickens, Because in the Common Everyday Experience of Mankind Chickens are Birds with Avian Characteristics, While Animals are Thought of as Four-Footed Mammals.

Unless otherwise defined, statutory terms are generally interpreted in accordance with their ordinary meaning. *BP Am. Prod. Co. v. Burton*, 549 U.S. 84, 127 (2006). Webster's Dictionary defines "chicken" as, "(A)the common domestic fowl (*Gallus gallus*) especially when young; its flesh used as food—compare jungle fowl; (B) any of various birds of their young. Webster's Encyclopedic Unabridged Dictionary of the English Language (New. Rev. Ed. 1996). Birds are defined as, "(1) a feathered vertebrate; (2) any of a class of warm-blooded vertebrates distinguished by having the body more or less completely covered with feathers and the forelimbs modified as wings. Webster's Encyclopedic Unabridged Dictionary of the English Language (New. Rev. Ed. 1996).

Yes, chickens fit within the scientific definition of animal, which states,

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

Webster's Encyclopedic Unabridged Dictionary of the English Language (New. Rev. Ed. 1996). Scientific definition and usage can help ascertain the meaning of a word, but common understanding need also be taken into account. In *Gonzales v. Carhart*, 550 U.S. 124 (2006), the court used both the scientific understanding and the common understanding of the word "fetus" to determine that a fetus is a living organism. 550 U.S. 124, 125 (2006).In order to determine whether an Act or any of its amendments has directly spoken to the precise question at issue, the court must give the terms of that statute their "ordinary, contemporary, common meaning, absent an indication Congress intended them to bear some different import. *Kyocera Wireless Corp. v. ITC*, 545 F.3d 1340, 1355 (Fed. Cir. 2008). The lower court, in its opinion, stated in the common everyday experience of mankind chickens are seldom though of as animals..." R. at 5; *see also State ex rel. Miller v. Claiborne*, 505 P. 2d 732, 735 (Kan. 1973)(Kansas statutes proscribing cruelty to animals had traditionally been directed toward protection of the four-legged animal, especially beasts of the field and beasts of burden. Chickens were generally thought of as birds as opposed to animals); *State v. Buford*, 65 N.M. 51, 53 (1958) (holding that the anti-cruelty statute does not apply to fouls).

The ordinary meaning of the word "animal" does not include chicken. The definition of both chicken and bird refer the these creatures as a separate category of living things. Neither of the definitions refer to these creatures as "animals," but rather foul. They are distinguished from other warm blooded vertebrates by their common characteristic of being covered with feathers. animals as a separate category of creatures. Appellant, in his argument, completely ignores the common meaning of the word "animal." While chickens are encompassed in the scientific

meaning of animal, many other living organism such as insects and arachnids also fit within the "scientific" definition. However, few if any would venture to argue that the Twenty-Eight Hour Law protects cockroaches, which with no doubt meet the scientific definition of animal. Just as in *Gonzales*, the court in this case should take the common understanding in conjunction with the scientific meaning to rule out chickens from the Twenty-Eight hour Law's reference to animals. It is clear through the lower court opinion, and the holding of other courts that the common understanding of "animal" does not encompass chickens.

Accepting the scientific definition of animal as the plain meaning of that word, ignores the central part of plain meaning construction, which is the common understanding of a word. Since the common understanding of the word animal dose not encompass birds, the rules of statutory construction require the inquire to end. Therefore, the Twenty-Eight Hour Law does not cover chickens.

B. The statutory scheme of the Twenty-Eight Hour Law does not include chickens, because the legislative intent, know through the statute's context, purpose and statutory scheme, indicate that "animals" refer only to four-footed mammals such as cattle, sheep, and swine.

Chickens are not covered under the plain meaning construction of the Twenty-Eight Hour Law; however, should this Court find that the statute is not clear on its face, the statutory scheme still bars the application of the law to chickens, because congress did not intend this law to cover chickens, the context under which this law was drafted did not cover chickens and the purpose of the law is not intended to protect chickens. If a statute on it face is unclear, the court must next look to the intent of Congress in enacting the law. If the intent of Congress is clear, that is the end of the matter; for the court, must give effect to the unambiguously expressed intent of Congress. *United States v. Curtis*, 245 F. Supp. 2d 512, 514 (W.D.N.Y. 2003).

The definition of words in isolation is not necessarily controlling in statutory construction. *Dolan v. United States Postal Serv*., 546 U.S. 481, 486 (U.S. 2006). A word in a statute may or may not extend to the outer limits of its definitional possibilities. Interpretation of

a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents or authorities that inform the analysis. *Id.* In considering the context, purpose and statutory text as a whole, the Twenty-Eight hour Law requires a narrower reading of the word "animal."

Appellant argues that because semantics and science include chicken with in the definition of "animal" that chickens are necessarily covered by the Twenty-Eight Hour Law. This logic is flawed, because the legislature when constructing statutes is not bound by scientific or dictionary definitions. The lower court recognized this and stated, "The law and the legislature, however, both fly on their own and are not servants to science or semantics." R. at 5. The court went on to state that it is not clear that, while chickens may biologically be animals, they are necessarily animals under the statute, because this construction may not be consistent with the statutory scheme. *Id.*

Looking at the historical context of animal protection laws, it is clear that throughout time protection has been aimed solely at four-footed mammals, which constitute what has come to be know in everyday language as "animals." *What about Wilbur? Proposing a Federal Statute to Provide Minimum Humane Living Conditions for Farm Animals Raised for Food Production*, 27 Dayton L. Rev. 133, 143 (1822 the English Parliament passed Martin's Act, which criminally punished the cruel or careless beating of farm animals, including cattle, sheep and mules. In 1828, New York enacted anti-cruelty legislation, making it illegal to maliciously kill, wound or torture farm animals, such as horses, oxen, cattle or sheep). The Supreme Court has held that even if a word could embrace a wide range of meanings, as in this case, the context under which the law was constructed must be taken into consideration. The Court in *Dolan v. United States Postal Service* noted that if considered in isolation, the phrase "negligent transmission" could include a wide range of negligent acts committed by the Postal Service in the course of delivering mail, including creation of slip-and-fall hazards from leaving packets and parcels on

the porch of a residence; however, both context and precedent required a narrower reading of "negligent transmission"statute that did not go beyond negligence causing mail to be lost or to arrive late, in damaged condition, or at the wrong address. 546 U.S. 481, 486 (U.S. 2006).

The history of “animal” statutes need be taken into account when construing the definition of animal in contemporary statutes. Statues back to the eighteenth century demonstrates that the word animal has historically been used to refer to four-footed mammals, such as sheep, swine and cattle. Just as in *Dolan*, the context of the Twenty-Eight Hour Law requires a narrow reading of “animal” to include only those four-footed mammals that have historically been referred to as animals in statutory contexts.

The legislative intent as to the meaning of “animal” can be constructed looking at the statutory scheme of animal protection laws. The three modern animal protection statutes are (1) the Twenty-Eight Hour Law; (2) Animal Welfare Act; and (3) Humane Methods of Slaughter Act of 1978. The Acts protect animals during transport, research and slaughter, respectively. 27 Dayton L. Rev. 133, 143.

The Twenty-Eight Hour Law, in its original version specifically referred to “cattle, sheep and swine” 49 USC 8050. The history section of the current statute explains that, “In subsection (a)(1), the words 'transporting animals' are substituted for 'whose road forms any part of a line of road over which cattle, sheep, swine, or other animals shall be conveyed' and 'carrying or transporting cattle, sheep, swine, or other animals' to eliminate unnecessary words.” *Id*. This is definitive evidence that Congress intended the Twenty-Eight Hour Law to cover only four-footed mammals. Also, the history notes make it clear that the change in language did not constitute a change in Congress' intent, but were made specifically to increase the ease of reading and to eliminate unnecessary words. The purpose of this statute is to ensure that livestock in transport are fed, watered, and rested at least once within the prescribed time. 27 Dayton L. Rev. 133, 143. Livestock refers to four-footed mammals such as those enumerated in the previous version

statute. The statute mandates transporters must provide "sufficient space for all the livestock to lie down at the same time. 49 USC 8050. The reference to livestock throughout the statute eliminates the ambiguity that is created by the word “animal” at the beginning of the statute. The reference to livestock also clearly eliminates chickens from the statute because the common understanding of livestock does not include birds of any kind.

Just as Congress has chosen to limit the Twenty-Eight Hour Law's application by specifically referring to livestock as animals, Congress expanded the definition of protected *animals* under the Animal Welfare Act. In 1970 Congress expanded the definition of “animal” in the Animal Welfare to include all warm-blooded animals. H. R. Rpt. 91-1651, at 5104 (Dec. 2, 1970). Congress expanded the definition of animals in this statute to include all warm blooded animals, implying chickens. The fact that this expansion was made in 1970 and the revision to the Twenty-Eight Hour Law was not made until 1994 is further evidence that Congress did not intent to include chickens in the Twenty-Eight Hour Law. Congress' use of “all warm blooded animals” in one statue but not in another statute indicates a willful intent to differentiate the two statutes and omit certain warm blooded animals from the later.

The distinct purposes of the two statutes accounts for the differing definitions of animal. The Twenty-Eight Hour Law was it was enacted for humane purposes and was designed to prevent wrongful or cruel treatment of stock. 49 USC 80502. While the Animal Welfare Act was enacted to promote the humane treatment of animals being used in experimentation and scientific studies. 7 U.S.C. § 2132 (1994). Conversely, the Animal Welfare Act has declined to protect livestock animals. 7 U.S.C. § 2132 (1994)(The AWA states in relevant part, "such term excludes horses not used for research purposes and other farm animals). By distinguishing the Twenty-Eight Hour Law from The Animal Welfare Act, one can infer that the different purposes of the two laws would logically lead to different meanings of the terms in each statute.

The Humane Methods of Slaughter Act is more closely related to the Twenty-Eight Hour

Law in purpose and can be used to ascertain the meaning of animal. The Humane Methods of Slaughter Act was enacted to is to prevent needless suffering of livestock during slaughter. 7 U.S.C. §1901(1994). The statute refers directly to cattle, calves, horses, mules, sheep, swine, and other livestock in its definition of animal. *Id*. Further, the statute explicitly excludes poultry from protection. 7 U.S.C. §1901(1994 & Supp. V 1999). The two statutes' kindred purposes of protecting the same class of animals, namely four-footed mammals, is evident in the use of livestock throughout both, and the reference to similar animals such as cattle sheep and swine in both. Since the intent of both statutes is very similar, and The Humane Methods of Slaughter Act expressly excludes poultry from its definition of animal, it can be inferred that Congress intended to also exclude poultry from the Twenty-Eight Hour Law.

Both the historical context and the intent of congress indicate that chickens and other forms of poultry are not included in the term "animal" as used in the Twenty-Eight Hour Law.

Because the plain language of the Twenty-Eight Hour Law is not ambiguous and clearly doe not include chickens its definition of animal, Appellant is not subject to this law. Additionally, even if this court does hold that the statute is ambiguous on its face, the intent of congress is clear and indicates that chickens were never intended to be covered by the Twenty-Eight Hour Law. Therefore Appellant is not subject to the federal law and is subject to the state law.

II. <u>The Supremacy Clause of the Unites States Constitution Does Not Ban Williams' Conviction Under the Floridina Anti-Cruelty Statute, Because the State Anti-Curtly Law is Not Preempted by the Federal Twenty-Eight Hour Law.</u>

When Federal Law is seeking a minimum standard, more precise State Laws can, and do, coexist with Federal Statutes. Floridina has promulgated an Anti-Cruelty to Animals Law (sometimes, hereinafter, "Anti-Cruelty Law"), a law which provides criminal penalties for individuals that overwork, abuse, or deny sustenance, water, or adequate shelter to animals. 8 FRS § 621(a)-(d). The Floridina Law is complementary to the Federal Twenty-Eight Hour Law (sometimes, hereinafter, "Twenty-Eight Hour Law"), which requires that interstate transportation of animals not be continuous for more that 28 hours "without unloading the animals for feeding, water, and rest." 49 U.S.C. § 80502(a). The Federal Statute also requires that animals be treated in "a humane way." *Id.* Because Congress did not intend to preempt State Law, and because the laws can coexist, the Federal Twenty-Eight Hour Law does not preempt Floridina's Anti-Cruelty to Animals Law.

In general, Federal Laws are "the supreme Law of the Land[...]" U.S. Const., Art. VI, cl. 2. Under this general principle, known as the Supremacy Clause, conflicts between state and federal laws are settled by affording deference and supremacy to the federal law. *See generally Hillsborough County v. Automated Medical Laboratories, Inc.*, 471 U.S. 707, 712-713, 105 S. Ct. 2371, 2376 (1985) (It is well-established that the supremacy clause invalidates state laws that interfere with or are contrary to federal law). However, the Supremacy Clause is limited by the presumption that the traditional police powers of the many States "were not to be superseded by [...] Federal Act[s] unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp*., 331 U.S. 218, 230, 67 S. Ct. 1146, 1152 (1947) (citing *Napier v. Atlantic Coast Line R. Co.*, 272 U.S. 605, 611 (1926); *Allen-Bradley Local v. Wisconsin Employment Bd.*, 315 U.S. 740, 749 (1942)). The police power of the States has historically included regulation of animals. *See Nicchia v. New York*, 254 U.S. 228, 230-31, 41 S. Ct. 103, 103-104 (1920); *DeHart v. Town of Ausitn*, Ind., 39 F.3d 718, 722, 1994 U.S. App. LEXIS 30106, 8 (7th. Cir. 1994); Because of the basic assumption that Federal Acts not interfere with State's police power, the Supreme Court is "reluctant to infer pre-emption." *Building and Const. Trades Council of Metropolitan Dist. v. Associated Builders and Contractors of Mass./R.I., Inc.*, 507 U.S. 218, 224, 113 S.Ct. 1190, 1194 (U.S.Mass.,1993). The determination that the Federal Twenty-Eight Hour Law does not preempt Floridina's Animal Cruelty Law is motivated by two guiding principles: "preemption must be determined on a statute-by-statute basis," *Kerr v. Kimmell*, 740 F. Supp. 1525, 1530, 1990 U.S. Dist. LEXIS 8228, 11 (D. Kan. 1990), and Congressional intent and purpose is the "ultimate touchstone of pre-emption analysis," *Cippolone v. Ligget Group, Inc.*, 505 U.S. 504, 516, 112 S. Ct. 2608, 2617 (1992).

Federal pre-emption doctrine includes five means by which federal law may supersede state law. *See Kerr v. Kimmell*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing *Hillsborough County*, 471 U.S. 707, 713, 105 S. Ct. 2371 (1985)). Congress may *expressly* provide "the extent

to which its enactments pre-empt state law." *English v. General Elec. Co.*, 496 U.S. 72, 78, 110 S. Ct. 2270, 2275 (1990) (emphasis added). Express pre-emption is primarily based upon the language contained in the Federal Statute, and whether such language, or the comprehensiveness of the language, dictates federal pre-emption. Conversely, *implied* or *inferred*[1] federal pre-emption involves the interaction between the Federal and State Laws. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 64-65, 123 S. Ct. 518, 527 (2002).

If the court cannot discern a clear Congressional intent, the court must then *infer* whether the "federal and state statutes, by their very terms, cannot coexist." *Summit Inv. and Development Corp. v. Leroux*, 69 F.3d 608, 610 (1st Cir.1995) (citing *Greenwood Trust Co. v. Commonwealth of Mass.*, 971 F.2d 818, 828 (1st Cir.1992), cert. denied, 506 U.S. 1052, 113 S.Ct. 974, 122 (1993)). If the area of law, or subject matter, is of preeminent federal interest, Congressional enactments may be deemed to supersede all laws within the area or *field*. *See Kerr*, 740 F. Supp. 1525, 1529; *see also Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Development Com'n.*, 461 U.S. 190, 207, 103 S.Ct. 1713, 1724 (U.S.,1983) (Congress historically retained exclusive federal jurisdiction to license the possession and use of nuclear materials, citing national security concerns). Field pre-emption is usually understood as a "species of *conflict* pre-emption." *English*, 496 U.S. 72, 79-80, n.5. Conflict pre-emption is found "where the state law conflicts with the federal law so that compliance with both is not possible [...]"*Kerr*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing *Hillsborough County*, 471 U.S. 707, 713, 105 S. Ct. 2371 (1985)). Similar to conflict pre-emption, *obstacle* pre-emption occurs "where state law stands as an obstacle to the accomplishment and execution of the federal objectives." *Kerr*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing *Hillsborough County*, 471 U.S. 707, 713, 105 S. Ct. 2371 (1985)). Each of the means of pre-emption will be evaluated, in turn, and shown to be inapplicable to the intended coexistence of the Twenty-Eight Hour Law

[1] Implied and inferred are used interchangeably and refer to pre-emption that are not expressly found in the text of a Federal enactment.

and the Anti-Cruelty Law.

A. The Twenty-Eight Hour Law Does Not Contain Language Which Would Indicate an Express or Implied Preemption of the Anti-Cruelty Law.

Courts first look at the plain language of a Federal Act to determine if Congress intended, expressly or impliedly, to pre-empt State Laws. In reviewing the Federal Animal Welfare Act,[2] the Supreme Court stated that "it is clear that federal law does not evince an intent to preempt state regulation of animal welfare." *Kerr*, 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing 7 U.S.C. §§ 2143(a)(8), 2145(b)). In *Kerr*, the court looked to two sections of the act to "show that Congress anticipated that states would remain active in this area of traditional state interest." *Id.* at 1530. 7 U.S.C. § 2143(a)(1) states "The Secretary shall promulgate standards to govern the humane handling, care, treatment, and transportation of animals by dealers, research facilities, and exhibitors." Congress clearly expresses an intent to promote humane conditions for animals transported between the states by dealers and other specified persons. The animals which Congress intended to protect were domesticated animals used for pets or show, specifically excluding birds or animals used for food. *See* 7 U.S.C. §2131(g). The plaintiff, Kerr, was the owner of dog kennel and was in the business of breeding and selling dogs. *Id.* at 1527. Kerr protested the Kansas Animal Dealers Act, K.S.A. 47-1701, *et. Seq.* (Supp. 1989), a State Statute that imposed additional requirements upon her, and other breeders, in addition to the burdens of complying with the Federal Animal Welfare Act. Along with the desire for humane treatment of certain animals, Congress stated that the Federally Act would "not prohibit any State (or a political subdivision of such State) from promulgating standards *in addition* to those standards promulgated by the" Federal Act. 7 U.S.C. §2143(a)(8) (emphasis added). Further, the "Secretary is authorized to cooperate with the officials of the various States [...]" From the two statutes, the court in *Kerr* determined that Congress had an express intent to not pre-empt any state laws that were in addition to the standards promulgated in the Federal Statute. Another

[2] Animal Welfare Act, 7 U.S.C. §§ 2131- 2157.

court, which also examined the Federal Animal Welfare Act, stated that the Act "does not contemplate express preemption and none can be inferred." *DeHart*, 39 F.3d at 722. Thus, when a statute expressly denies federal pre-emption, no federal pre-emption may be inferred.

Implied pre-emption may be found where a Federal Statute's thoroughness and comprehensiveness "leave no room for supplementary state regulation." *Kerr,* 740 F. Supp. 1525, 1529 (D. Kan. 1990) (citing *Hillsborough County*, 471 U.S. 707, 713, 105 S. Ct. 2371 (1985)). However, extensive regulation, alone, is not enough to establish federal pre-emption. *Sprietsma*, 537 U.S. at 60. In *Sprietsma*, the United States Coast Guard "had promulgated a host of detailed regulations." *Id.* In spite of the detailed regulations and a blanket pre-emption of State boating laws, the Supreme Court held that State Laws were not pre-empted where they regulated matters not covered by the Coast Guard regulations. Most simply, implied pre-emption is not found merely where there is extensive federal regulation.

The Twenty-Eight Hour Law expressly governs the interstate transportation of animals, but there is not an express intent to pre-empt State Laws which may also govern the matter. The only provision of the Federal Twenty-Eight Hour Act that references the Federal Government is part (d), which states that violation of the Act will result in charges by the Attorney General, in federal court, of which the offender may be "liable to the United States Government for a civil penalty." 49 U.S.C. § 80502. The single reference to the Federal Government, along with the other three sections, is not so comprehensive so as to preclude supplemental State Regulation. The Twenty-Eight Hour Law is a Spartan list of four provisions, vastly less comprehensive than the Coast Guard Regulations in *Sprietsman*. However, like *Sprietsman*, some of the Federal Regulation does not overlap the State Regulation. The Twenty-Eight Hour Act only applies to the feeding, watering, and resting of animals during transportation from one state "through or to a place in another state [...]" *Id.* at (a). Similar to *Sprietsman*, even if the Federal Act has the capacity to pre-empt the Anti-Cruelty Law, that pre-emption does not extend to matter outside of

the Federal Regualtion. Because the Twenty-Eight Hour rule only applies to transportation, any pre-emption would be likewise limited to matters of transportation.

Express pre-emption is not applicable because Congress enacted the Twenty-Eight Hour Law void any language of pre-emption. The Floridina Anti-Cruelty Act, like the Kansas Animal Dealers Act in *Kerr*, includes requirements in addition to the federal Act that are meant to further promote the humane handling of animals. Finally, the Federal Statute most similar, in purpose, to the Twenty-Eight Hour Law, the Federal Animal Welfare Act, expressly prohibits pre-emption. If the intent of Congress is to lessen animal suffering, and Congress does not seek pre-emption, this court should allow Floridina to enact and enforce laws which further lessen animal suffering.

B. Inferred Means of Pre-emption are Inapplicable Because the Twenty-Eight Hour Law and the Anti-Cruelty Law are Capable of Coexistence.

When pre-emption is not expressly found in a Federal enactment, the court will look to conflict, obstruction, and field pre-emption rules, but will only find such inferred pre-emption when there is nonetheless a clear and manifest reason for pre-emption. “It has long been the public policy of this country to avoid unnecessary cruelty to animals.” *Humane Soc. of Rochester and Monroe Co. for Prevention of Cruelty To Animals, Inc. v. Lyng*, 633 F.Supp. 480, 486 (W.D.N.Y.,1986). In the 1800’s a new attitude towards animals persuaded enactment of many anti-cruelty laws and all 50 states and the District of Columbia had adopted anti-cruelty measures by the year 1913. *Id.*; *see* Animal Welfare Institute, *Animals and Their Legal Rights* 13-14 (1978); *see* David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800’s*, 1993 Det. C.L. Rev. 1 (Spring 1993). “The Federal Government likewise has enacted anti-cruelty laws, such as the Twenty-Eight Hour Law, 45 U.S.C. § 71 et seq. (governing transport of livestock by rail), the Humane Methods of Slaughter Act, 7 U.S.C. § 1901 et seq., and the Animal Welfare Act, 7 U.S.C. § 2131 et seq. (governing laboratory animals, as well as shipments of animals and treatment of animals in zoos).” *Humane Soc. Of Rochester*, 633 F. Supp. at 486. Thus, it seems that State anti-cruelty laws and Federal enactments are generally

consistent in their purpose: minimize unnecessary cruelty to animals.

Field pre-emption rules are appropriate where the area of law is reserved for federal regulation because the regulation of that field is "so intimately blended and intertwined with responsibilities of the national government that [...] [states] must yield." *Hines v. Davidowitz,* 312 U.S. 52, 66, 61 S. Ct. 399, 403 (1941). In certain fields of law, such as foreign relations, the country must speak with one voice. Specifically, "the Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties." The Supreme Court analogized field pre-emption for foreign relations with the registration and regulation of immigrant aliens. Specifically, "where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." *Id.* at 66-67. Other areas which have been found to be subject to field pre-emption include: the licensing of the use of nuclear materials, the required design and safety requirements of oil tankers in American waters. *see Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Development Com'n.,* 461 U.S. 190, 207, 103 S.Ct. 1713, 1724 (U.S.,1983) (Congress historically retained exclusive federal jurisdiction to license the possession and use of nuclear materials, citing national security concerns); *see Ray v. Atlantic Ritchfield Co.,* 435 U.S. 151, 98 S. Ct. 988 (1978); *see also U.S. v. Locke,* 529 U.S. 89, 111, 120 S. Ct. 1135 (2000) (analyzing decision in *Ray*).

In *Ray v. Atlantic Richfield Co.,* the Supreme Court held that certain State Regulations were in direct conflict with Federal Regulations. 435 U.S. 151. In regards to oil tankers, Congress empowered the "Secretary of Transportation to establish, operate, and require compliance with [...] vessel size limitations," and pilot licensing. *Id.* at 151. The State of

Washington enacted several regulations including that certain ships be piloted by State-licensed pilots, certain design and weight limitations, and a tug boat escort for certain tankers. The purposes of the federal regulations were "protection of life, property, and the marine environment from harm." *Id.* at 161. Because of the importance of purpose, the potential for harm, and most importantly, the international presence, Congress promulgated a uniform system of requirements. *Id.* In order to ensure that American ships were allowed in foreign ports and safe foreign ships were allowed in American ports, Congress set-out to create a uniform, international standard for tanker size and piloting. *Id.* at 169. "It is therefore clear that [the Federal Act] leaves no room for the States to impose different or stricter design requirements than those which Congress has enacted with the hope of having them internationally adopted or has accepted as the result of international accord."*Id.* Because international accord and international uniformity are essentially dealings in foreign affairs, the area of law in *Ray* is in the exclusive field of the Federal Government. *Id.* at 168. Under field pre-emption analysis, the State's regulations of tanker design and size, along with the state-licensed pilot requirement, are pre-empted by the Federal Regulations. However, the tug boat escort provision was not a design or pilot requirement; thus, it did not conflict with the Federal Laws. *Id.* 171-172. The court stated that the escort requirement is not pre-empted unless future Federal regulations adopt or deny the escort requirement.

Potential conflicts between Federal and State law are generally not considered by the courts until such conflicts have actually arisen. *Rice*, 331 U.S. at 238. In the instant matter, the District Court deemed that "facially, [Defendant] Williams is in compliance with the federal law [Twenty-Eight Hour Law], and there is no claim to the contrary." *The People of the State of Florida v. Williams*, Memorandum Opinion, Cr. No. 08-1028, p.7 (Hereinafter, "Williams Opinion"). Thus, there is no actual conflict between the State and Federal Laws. Moreover, the State and Federal anti-cruelty laws are generally in accordance with a shared purpose of

lessening unnecessary suffering of animals. With a shared purpose and absent any conflict, the Federal Twenty-Eight Hour Law and the Floridina Anti-Cruelty Law have demonstrated the capacity to coexist.

Unlike the Federal Provisions in *Ray*, where Congress expressly sought a uniform, international standard in order to better conduct foreign trade, the Federal Twenty-Eight Hour Law is meant only to provide a minimum standard of humane treatment of animals. Whereas *Ray* and *Hines* involved areas of law that were the exclusive responsibility of the Federal Government, i.e. foreign affairs, immigration, alienage, and enormous oil tankers in a crowded port, the humane treatment of animals began with State enactments of Anti-Cruelty Laws. In this way, the humane treatment of animals began with the States and continues as a traditionally-held State police power. Unlike *Ray* and *Hines*, animal-cruelty laws should not be subject to field pre-emption analysis. Without any implied pre-emption, particularly field pre-emption, the States are to be free to supplement the Federal Twenty-Eight Hour Law.

C. The Anomalous 1962 Holding That a Prior Formulation of the Federal Twenty-Eight Hour Law Pre-Empted a Provision of the California Agriculture Code Lacks Precedential Value Because it is Contrary to Interpretations of the Current Enactment of the Law

The Court of Appeals of California, in *The People v. The Southern Pacific Co.*, held a repealed version of the Federal Twenty-Eight Hour Law being "so pervasive are its terms that reason compels the inference Congress left no room for the states to supplement it." 208 Cal. App. 2d 745, 752, 25 Cal. Rptr. 644, 14 (1962). The language in *The Southern Pacific Co.* is very similar to that of the field analysis of *Hines*, which stated "where the federal government, in the exercise of its superior authority in this field, has enacted a complete scheme of regulation and has therein

provided a standard for the registration of aliens, states cannot, inconsistently with the purpose of Congress, conflict or interfere with, curtail or complement, the federal law, or enforce additional or auxiliary regulations." 312 U.S. at 66-67. Both courts were correct in defining field pre-emption according to Congress' ability to thoroughly regulate the entire field.

However, the error of the court in *The Southern Pacific Co.* lies with passing over the fundamental principle of field pre-emption: "regulation of that field is "so intimately blended and intertwined with responsibilities of the national government that [...] [states] must yield." *Id.* Field pre-emption, as shown in the licensing of nuclear materials, monopolization of foreign affairs, and regulation of oil tankers; is hinged upon the field being a traditional and sole responsibility of the Federal Government. *see Pacific Gas and Elec. Co. v. State Energy Resources Conservation & Development Com'n.*, 461 U.S. 190, 207, 103 S.Ct. 1713, 1724 (U.S.,1983) (Congress historically retained exclusive federal jurisdiction to license the possession and use of nuclear materials, citing national security concerns); *see Ray v. Atlantic Ritchfield Co.*, 435 U.S. 151, 98 S. Ct. 988 (1978) (Federal Laws pre-empted most of a State's legislative attempt to regulate oil tankers in the area). Animal Cruelty Laws have their impetus in State Legislatures, specifically, New York in 1829. *See* David Favre & Vivien Tsang, *The Development of Anti-Cruelty Laws During the 1800's*, 1993 Det. C.L. Rev. 1 (Spring 1993). Thus, animal cruelty is not a traditional and exclusive responsibility of the Federal Government. In fact, the police power of the States has historically included regulation of animals. *See Nicchia v. New York*, 254 U.S. 228, 230-31, 41 S. Ct. 103, 103-104 (1920); *DeHart v. Town of Ausitn*, Ind., 39 F.3d 718, 722, 1994 U.S. App. LEXIS 30106, 8 (7th. Cir. 1994). The presumption against federal pre-emption of State police powers is a barrier too high for one court's erroneous applications of law to overcome. Without an express or implied declaration of federal pre-emption, States are compelled by federalism and driven by police power to enact laws.

CONCLUSION

For the foregoing reasons, Respondent/Cross-Appellant, The People of the State of Floridina, respectfully requests that the Court overrule the decision of the State of Floridina, District of Stinsonia as to the finding that chickens are "animals" as used by the Twenty-Eight Hour Law, 8 U.S.C. section 80502. Further, Respondent/Cross-Appellant respectfully requests that the Court affirm the finding of the State of Floridina, District of Stinsonia that the Floridina state Cruelty to Animals Law, 8 FRS section 620(1), is not preempted by the federal Twenty-Eight Hour Law. Lastly Respondent/Cross-Appellant respectfully requests that the Court enforce the conviction of Appellant Williams of the forty-five counts of cruelty to Animals.

Respectfully Submitted,

Team 1708
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