



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

DATE April 19, 2010

SUBJECT Preemption of federal law in conflict with state law

Issue: This memorandum addresses the effect of a state constitutional amendment or statute which is inconsistent with federal law.

Summary: When a state enacts a law or amends its constitution and the state law is inconsistent with a valid federal mandate, the state law will be void under fundamental principles of preemption.

Preemption is a doctrine which holds that certain matters are of such a national, as opposed to local, character that federal laws preempt or take precedence over state laws.¹ As such, a state may not pass a law inconsistent with the federal law.² The concept of preemption derives from the Supremacy Clause of the United States Constitution.³ The Supremacy Clause states that the laws 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."⁴

It has long been recognized that under the Supremacy Clause, federal law preempts contrary state enactments.⁵ In fact, the Wyoming Constitution declares that:

The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land.⁶

¹ Black's Law Dictionary at 1060 (5th Ed. 1978).

² *Id.*

³ *Northwest Cent. Pipeline Corp. v. State Corp. Comm'n*, 489 U.S. 493, 509 (1989)

⁴ U.S. Const., art. VI, cl. 2.

⁵ *McCulloch v. Maryland*, 17 U.S. 316, 405-06 (1819).

⁶ Wy. Const., art. 1, § 37.

As indicated by this provision of the Wyoming Constitution, the preemption doctrine is based on the concept that federal law is as much the law of the states as are the laws passed by the state legislatures.⁷ Federal and state law together form one system of jurisprudence, which constitutes the law of the land for the state.⁸ It follows that when a state constitutional provision, statute or administrative rule conflicts with a federal statute, the conflicting portion of the state law is without effect.⁹ Although courts should attempt to accommodate the provisions of state constitutions as far as possible, when there is an unavoidable conflict between the federal and a state constitution, the Supremacy Clause controls.¹⁰

The Wyoming Supreme Court has affirmed that the Supremacy Clause invalidates all state laws that either interfere with or are contrary to federal law.¹¹ The Wyoming high court has further explained that there are several ways in which the doctrine of preemption can be demonstrated.¹² The most direct method is for Congress to establish federal preemption by stating its intention to do so in express terms. If a demonstration of intention is not present, preemption can be inferred when the scheme of federal regulation so comprehensively pervades the area of law that no room is left for supplementary state regulation. Federal preemption will also be inferred where the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. If preemption is determined to be present, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.¹³

In an equal protection challenge to Wyoming's 1981 statute reapportioning the House of Representatives, the United States Supreme Court upheld the allocation of one seat in the House to Niobrara County, the state's least populous county. In analyzing the constitutionality of the reapportionment, the court recognized that Wyoming had a longstanding and legitimate policy of preserving county boundaries as representative districts and placed particular emphasis on the fact that the Wyoming Constitution had allocated one seat in the House to each county since becoming a state in 1890.¹⁴

⁷ *Haywood v. Drown*, 129 S.Ct. 2108, 2113 (2009).

⁸ *Id.*

⁹ *Geier v. American Honda Motor Co.*, 529 U.S. 861, 894 (2000).

¹⁰ *Schaefer v. Thomson*, 240 F. Supp. 247, 251 (D. Wyo. 1964).

¹¹ *Dynan v. Rocky Mountain Fed. Sav. & Loan*, 792 P.2d 631, 636 (Wyo. 1990); *United Pacific Ins. Co. v. Wyoming Excise Tax Div.*, 713 P.2d 217, 227 (1986); *Ray v. St. Vincent Healthcare, Inc.*, 2006 WY 98, ¶12, 139 P.3d 464, 467 (2006).

¹² *Dynan*, 792 P.2d at 636.

¹³ *Id.*

¹⁴ *Brown v. Thomson*, 462 U.S. 835, 837 (1983).

Federal courts, however, have not been so generous when states adopt constitutional provisions as direct challenges to federal law.¹⁵ For example, the Tenth Circuit found that a Colorado constitutional provision that denied the use of Medicaid funds to terminate pregnancies resulting from rape or incest violated federal Medicaid law. The court held that so long as Colorado continued to participate in Medicaid, it was enjoined from denying the funding to Medicaid eligible women. One of the most well known confrontations between federal law and a state constitutional provision concerned school desegregation. In attempt to avoid federal law commanding the desegregation of its schools, Arkansas amended its constitution to prohibit desegregation. The United States Supreme Court emphasized that a state cannot evade the dictates of federal law by enacting a constitutional amendment:

[T]he prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action or whatever the guise in which it is taken. In short, the constitutional rights of children not to be discriminated against in school admission on grounds of race or color declared by this Court in the *Brown [v. Board of Education]* case can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted "ingeniously or ingenuously."¹⁶

In conclusion, a state cannot, by statute or by constitutional amendment, override a valid federal statute or mandate. As aptly explained the Seventh Circuit Court of Appeals:

The Ninth Amendment [providing that the enumeration of certain rights in the constitution shall not be construed to deny others retained by the people] does not invert the supremacy clause and allow state constitutional provisions to override otherwise lawful federal statutes. Illinois could not by creating a state constitutional right to possess child pornography preempt the federal laws that prohibit such possession.

It has been argued that the Ninth Amendment authorizes federal courts to recognize, as federal constitutional rights, rights not enumerated in the Bill of Rights or elsewhere in the constitutional text, and even that it protects against federal encroachment certain rights possessed by citizens of the states before they entered the Union. These arguments have not won wide acceptance [T]he Ninth Amendment does not empower the states, by creating new state constitutional rights, to truncate the power of Congress under Article I by preempting federal legislation.¹⁷

¹⁵ *Hern v. Beye*, 57 F.3d 906 (1995).

¹⁶ *Cooper v. Aaron*, 358 U.S. 1, 17 (U.S. 1958) (internal citations omitted); Timothy S. Jost, *Can States Nullify Health Care Reform?*, N. Engl. Med. J. 362;10 (Mar. 11, 2010).

¹⁷ *United States v. Spencer*, 160 F.3d 413, 414-415 (7th Cir. Ill. 1998) (Posner, Chief Judge) (internal citations omitted).

APPENDIX 6a

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Accordingly, an attempt to nullify the implementation of a federal mandate, whether by amendment to the Wyoming Constitution or by statute, would not survive a challenge in either Wyoming courts or federal courts if the federal mandate is valid.¹⁸

¹⁸ Timothy S. Jost, *Can States Nullify Health Care Reform?*, N. Engl. Med. J. 362;10 (Mar. 11, 2010).

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