

2015 Annual Seminar on Municipal Law

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HOW THE STATE CAN PREEMPT A LOCAL
ORDINANCE WITHOUT REALLY TRYING:
RYALS v. CITY OF ENGLEWOOD

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The subject matter.

How a local ordinance concerning sex offender residency became focus of efforts to set aside all such laws and:

1. Lessons learned;
2. Effect on state preemption doctrine;
3. Larger policy implications for home rule.

Some preliminaries.

- Still awaiting Colo. Sup. Ct. decision.
- Views are those of speaker, not CML.
- Speaker perspective.
- Questions/comments encouraged.

Mapping.

- Plaintiff map: Only 55 unrestricted residential addresses.
- Englewood map: 126 unrestricted residential parcels.

Either way, trial court found that roughly 99% off limits to RSO.

Sex Offender Statutes.

- Create Sex Offender Management Board (SOMB), 1992.
- Enact Colorado Sex Offender Registration Act (CSORA), 2002.
- Add Lifetime Supervision of Sex Offenders, also in 2002.
- Said to constitute “comprehensive scheme” of treatment and supervision.

State regulation of plaintiff.

- Plaintiff was off parole, so essentially no state regulation.
 - Plus no Lifetime supervision.
- Required to register, but delegated to city.
- SOMB does not place anyone in residence.
- SOMB guidelines re residence, but don't speak to location.

Review of preemption law.

- Grows out of Colorado Constitution Article XX, Section 6 granting “home rule” to municipalities.

Review of preemption law.

- The three categories:
 1. Local;
 2. Statewide;
 3. Mixed.

Court concludes mixed.

Review of preemption law.

- Where “mixed” local can regulate so long as doesn’t conflict with state law.
- Three ways to conflict:
 1. Express statutory preemption;
 2. Implicit legislative intent to preempt; or
 3. Operational effect conflicts with state law.

Arguments about danger and ineffectiveness.

1. Drives underground.
2. Interrupts reintegration.
3. No facts showing makes kids safer.

Note has nothing to do with preemption.

Domino effect argument.

- Argument is that all cities and counties will enact and then RSO will have nowhere to live.
- But:
 - Colorado has 271 municipalities and 64 counties;
 - Less than 10 known ordinances.

We've been here before.

- *City of Northglenn v. Ibarra.*
 - Ordinance prohibiting unrelated and unmarried RSO from living together in single family residence.
 - Said to conflict with state law regarding placement of foster children.
 - Decided on "statewide concern" basis.

We've been here before.

- New members since *Ybarra*:
 - J Eid;
 - J Boatright;
 - J. Marquez;
 - J. Hood.

Lessons learned.

1. Perhaps be more sensitive to map, provide more available non-restricted areas.
2. Make record that not in conflict with state law.
3. Make record that state has already determined to be dangerous and tie to that.

Lessons learned.

4. Perhaps consider making persons who applies to more limited.
5. True individualized assessment not feasible.
