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Preemption

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PREEMPTION

N.Y. CONST. art. IX, § 2 (c):

In addition to powers granted in the statute of local governments or in any other law, (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to its property, affairs or government and, (ii) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of this constitution or any general law relating to the following subjects, whether or not they relate to the property, affairs or government of such local government, except to the extent that the legislature shall restrict the adoption of such a local law relating to other than the property, affairs or government of such local government:

(10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

N.Y. CONST. art. IX, § 3 (c):

Rights, powers, privileges and immunities granted to local governments by this article shall be liberally construed.

U.S. CONST. art. VI:

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.

SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

ILC Data Device Corp. v. County of Suffolk⁹¹⁴
 (decided September 14, 1992)

Plaintiffs, affected corporations, contended that Suffolk County Local Law number 21,⁹¹⁵ which regulated the usage of video display terminals (VDT) among the corporations doing business in Suffolk County, is unconstitutional⁹¹⁶ because it “is inconsistent with or preempted by” various New York State and federal labor laws, most notably, New York Labor Law.⁹¹⁷ The appellate division, second department, held that article IX, section 2 of the New York Constitution prohibits Suffolk County from regulating use of VDTs in the workplace because state and federal regulations have preempted the field of occupational safety.⁹¹⁸

In May of 1988, the Suffolk County Legislature implemented Local Law number 21, which provided employees “‘protection

914. 182 A.D.2d 293, 588 N.Y.S.2d 845 (2d Dep’t 1992).

915. N.Y. SUFFOLK COUNTY LAW § 483-3(A) (1984). Section 3(A) provides in relevant part:

- (1) Any individual who is to be assigned by an employer as an operator shall receive . . . an ophthalmological/optometric examination conforming to the recommended components of an eye vision examination established by the American Optometric Association, with a view to the specific requirements of visual correction that may be needed by an operator for the job.
- (2) Every employer shall maintain records sufficient to verify its compliance with Subsection A of this section.
- (3) The employer shall:
 - a) Pay eighty percent (80%) of the usual and customary fees . . . for initial and annual ophthalmological or optometric examinations for each operator

Id.

916. N.Y. CONST. art. IX, § 2.

917. *ILC*, 182 A.D.2d at 297, 588 N.Y.S.2d AT 847; N.Y. LAB. LAW § 21 (McKinney 1986).

918. *ILC*, 182 A.D.2d at 297, 588 N.Y.S.2d at 847.

against video display terminals.”⁹¹⁹ The law required that “employers operating 20 or more VDTs in the County meet certain workplace standards . . . for light, noise levels, and seating comfort for their . . . video operators.”⁹²⁰ In addition, the law provided the operators with the opportunity for an annual eye examination and corrective lenses, eighty percent of such cost is to be paid by the employer.⁹²¹ Finally, the law authorized the Commissioner of the Suffolk County Department of Health Services to pass “regulations governing the inspection of employer premises and the enforcement of the Local Law.”⁹²²

Plaintiffs brought suit against Suffolk County seeking a judgment declaring that the County lacked authority under the Municipal Home Rule Law⁹²³ to enact the VDT law, alleging

919. N.Y. SUFFOLK COUNTY LAW § 483-1 (1984). Section 484-1(A) states:

- A. This legislature hereby finds and determines that it is in the public interest to provide public and private sector employees who operate video display terminals within Suffolk County with a safe and healthy work environment. This legislature further determines that, although some employers and manufacturers have recognized and implemented minimum safeguards in equipment and workstation design and work . . . the vast majority of terminal operators remains yet, unprotected.

Id.

920. N.Y. SUFFOLK COUNTY LAW § 483-3(A)(3)(a) (1984).

921. *Id.*

922. N.Y. SUFFOLK COUNTY LAW § 484-6(B) (1984). Section 484-6(B) states in relevant part:

This Commission shall issue a written report on December 31 of every odd-numbered year, outlining and describing recommendations, if any, for changes, amendments, modifications, additions or deletions to the workstation standards for video display terminal operators as set forth in § 484-3B of this chapter.

Id.; N.Y. SUFFOLK COUNTY LAW § 484-8 (1984). Section 484-8 states in relevant part:

Employers shall have six (6) months from the effective date of this chapter to comply with all other provisions of §§ 484-3 and 484-4 of this chapter

Id.

923. N.Y. MUN. HOME RULE § 10(1)(i) (McKinney 1969). Section (10)(1)(i) provides in relevant part:

- 1) In addition to powers granted in the constitution, the statute of local governments or in any other law,

that is was preempted by New York's Labor Law⁹²⁴ and Workers' Compensation Law,⁹²⁵ as well as federal legislation.⁹²⁶ Suffolk County responded that no inconsistency or preemption existed, and its VDT law was otherwise proper pursuant to the County's police power.⁹²⁷ After the County's motion to dismiss the complaint was denied plaintiffs succeeded in obtaining an injunction prohibiting the County from enforcing the law.⁹²⁸ Thereafter, Suffolk County moved for summary judgment and the supreme court held that the Suffolk County Legislature lacked the authority to enact this legislation under Municipal Home Rule Law section 11(1)(f).⁹²⁹ The County appealed.

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- (i) every local government shall have power to adopt and amend local laws not inconsistent with the provisions of the constitution or not inconsistent with any general law relating to its property, affairs or government

Id.

924. N.Y. LAB. LAW § 21 (McKinney 1986). The section provides in relevant part:

The commissioner. . .

- (5) Shall institute methods and procedures for the establishment of a program for voluntary compliance by employers and employees with the requirements of this act and all applicable safety and health standards and rules and regulations promulgated pursuant to the authority of this article;
- (6) Shall provide a method of encouraging employers and employees in their efforts to reduce the number of safety and health hazards arising from undesirable, inappropriate, or unnecessary working conditions at the workplace and of stimulating employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions.

Id.

925. N.Y. WORK. COMP. LAW § 140 (McKinney 1965).

926. *ILC*, 182 A.D.2d at 296, 588 N.Y.S.2d at 847.

927. *Id.* at 297, 588 N.Y.S.2d at 847.

928. *Id.*

929. *ILC Data Device Corp. v. County of Suffolk*, 146 Misc. 2d 462, 464, 550 N.Y.S.2d 993, 994 (Sup. Ct. 1989); N.Y. MUN. HOME RULE § 11(1)(f). Section 11(1)(f) (McKinney 1969) states in relevant part:

- 1) Notwithstanding any provision of this chapter, the legislative body shall not be deemed authorized by this chapter to adopt a local law which supersedes a state statute, if such law:

The appellate division agreed with the lower court's conclusion but based its determination on different reasoning.⁹³⁰ The court first addressed the County's home rule powers. Quoting from *People v. DeJesus*,⁹³¹ the court stated: "[S]ince the fount of the police power is the sovereign State, such power can be exercised by a local government unit only when and to the degree it has been delegated such lawmaking authority."⁹³² The court noted that the Municipal Home Rule Law,⁹³³ which grants local governments broad powers to "enact laws affecting parochial concerns," is taken virtually verbatim from article IX, section 2.⁹³⁴

Both article IX, section 2⁹³⁵ as well as Municipal Home Rule Law Section 10(1)(ii)(a)(12),⁹³⁶ expressly state that "every local

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- (f) Applies to or affects any provision of paragraph (c) of subdivision one of section one hundred ninety-one of the election law, the labor law, sections two, three and four of a chapter of the laws of nineteen hundred sixty-eight, entitled "An act in relation to . . . the workmen's compensation law"

Id.

930. *ILC*, 182 A.D.2d at 297, 588 N.Y.S.2d at 847.

931. 54 N.Y.2d 465, 430 N.E.2d 1260, 446 N.Y.S.2d 207 (1981).

932. *ILC*, 182 A.D.2d at 297, 588 N.Y.S.2d at 847 (quoting *DeJesus*, 54 N.Y.2d at 468, 430 N.E.2d at 1261, 446 N.Y.S.2d at 208).

933. N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12) (McKinney 1969).

934. *ILC*, 182 A.D.2d at 298, 588 N.Y.S.2d at 848.

935. N.Y. CONST. art IX, § 2. Section 2 states in relevant part:

In addition to powers granted in the statute of local governments or in any other law . . . (ii) every local government shall have the power to adopt and amend local laws . . . relating to the following subjects

- 10) The government, protection, order, conduct, safety, health and well-being of persons or property therein.

Id.

936. N.Y. MUN. HOME RULE LAW § 10(1)(ii)(a)(12) (McKinney 1969).

This provision states in relevant part:

- 1) In addition to powers granted in the constitution the statute of local governments or in any other law,
 ii) every local government . . . shall have power to adopt . . . local laws not inconsistent with the provisions of the constitution, . . . whether or not they relate to the . . . affairs or government of such local government:
 a) A county, city, town or village:

government shall have power to adopt and amend local laws . . . whether or not they relate to the property, affairs or government of such local government”⁹³⁷ Municipal Home Rule Law section 11(1)(f)⁹³⁸ provides: “Notwithstanding any provision of this chapter, the legislative body shall not be deemed authorized by this chapter to adopt a local law which supersedes a state statute, if such local law: (f) Applies to or affects any provision of . . . the labor law . . . or the workmen’s compensation law.”⁹³⁹ The plaintiffs, claimed that because Local Law number 21 sets standards for the maintenance of the VDT stations and for the health-care of operators, it “‘applies to or affects’ both the Labor Law and the Worker’s Compensation Law,” and so “impermissibly ‘supersedes’ these State laws”⁹⁴⁰

The appellate division rejected this argument, however, because it found the plaintiffs’ interpretation of the statute as too strained.⁹⁴¹ The court declared that in order to be invalid, section 11 requires that the local law “must *first supersede a State statute*, and then it must . . . apply to or affect a provision of one of the enumerated bodies of state law.”⁹⁴² Applying its own interpretation of the statute to the facts of the case, the court found that Local Law number 21 does not contain “an intent to supersede any other law.”⁹⁴³ Furthermore, the court did not find that the law “substantially compl[ied] with the procedural

(12) The powers granted to it in the statute of local governments.

Id.

937. *Id.*

938. N.Y. MUN. HOME RULE LAW § 11(1)(f) (McKinney 1969).

939. *Id.*

940. *ILC*, 182 A.D.2d at 298, 588 N.Y.S.2d at 848.

941. *Id.* at 298-99, 588 N.Y.S.2d at 848-49. *See also* Civil Serv. Employees Assoc., Inc. v. County of Oneida, 78 A.D.2d 1004, 1004, 433 N.Y.S.2d 907, 908 (4th Dep’t 1980) (“the statute is to be construed according to its most natural and obvious sense”); Shoreham Wading River Cent. Sch. Dist. v. Town of Brookhaven, 107 A.D.2d 219, 223, 486 N.Y.S.2d 277, 280 (2d Dep’t 1985) (“the meaning attached to [statutory language] should be neither strained nor artificial”).

942. *Id.* at 299, 588 N.Y.S.2d at 848.

943. *Id.*

requirements” of Municipal Home Rule Law section 22⁹⁴⁴ for superseding a state statute.⁹⁴⁵

The court then turned to the issue of whether Local Law number 21 was “inconsistent with or preempted any New York State or Federal law,” and thus rendered invalid under the article IX, section 2.⁹⁴⁶ The court observed that a local rule is considered invalid as inconsistent with the state law in one of two ways: “where an express conflict exists between the State and local laws, . . . [and] where the State has clearly evinced a desire to preempt an entire field thereby precluding any further local regulation.”⁹⁴⁷ The court further noted that an inconsistency is found when the local law prohibits conduct

944. N.Y. MUN. HOME RULE LAW § 22 (McKinney 1969). Section 22 states in relevant part:

In adopting a local law changing or superseding any provision of a state statute or of a prior local law or ordinance, the legislative body shall specify the chapter or local law or ordinance, number and year of enactment, section, subsection or subdivision, which it is intended to change or supersede

Id.

945. *ILC*, 182 A.D.2d at 299, 588 N.Y.S.2d at 848-49.

946. *Id.* at 299, 588 N.Y.S.2d at 849. *See* New York State Club Assoc., Inc. v. City of New York, 69 N.Y.2d 211, 505 N.E.2d 915, 513 N.Y.S.2d 349 (1987); Consolidated Edison Co. of New York, Inc. v. Town of Red Hook, 60 N.Y.2d 99, 105, 456 N.E.2d 487, 490, 468 N.Y.S.2d 596, 599 (1983) (holding that the local regulation in the field of siting of major steam electric generating plants was preempted by legislative regulation); Monroe-Livingston Sanitary Landfill, Inc. v. Town of Caledonia, 51 N.Y.2d 679, 683, 417 N.E.2d 78, 80, 435 N.Y.S.2d 966, 968 (1980) (where state has preempted the field through “legislation evidencing a State purpose to exclude the possibility of varying local legislation . . . local law may be said to be inconsistent with a State law because it prohibits something which the state law would consider acceptable”); *People v. Cook*, 34 N.Y.2d 100, 105-06, 312 N.E.2d 452, 455, 356 N.Y.S.2d 259, 264 (1974).

947. *ILC*, 182 A.D.2d at 300, 588 N.Y.S.2d at 849. In support of this proposition the court cited, *inter alia*, *People v. New York Trap Rock Corp.*, 57 N.Y.2d 371, 378, 442 N.E.2d 1222, 1225, 456 N.Y.S.2d 711, 714 (1982) (“[I]f a town or other local government is otherwise authorized to legislate, it is not forbidden to do so unless the State, expressly or impliedly has evinced an unmistakable desire to avoid the possibility that the local legislation will not be on all fours with that of the State.”).

permitted by the state or if the local law imposes additional restrictions on an existing state law.⁹⁴⁸

Turning first to whether there existed an express conflict, the court summarily found that since “there are no State-wide statutory . . . provisions governing the use of VDT’s in the workplace,” no such conflict existed.⁹⁴⁹

Next, the court addressed the non-express preemption analysis, and declared that where state preemption of the entire field is determined, a local law on the same subject matter is seen as inconsistent with the state’s “overriding interests” either because it “(1) prohibits conduct which the State law . . . considers acceptable . . . or (2) imposes additional restrictions on rights granted by State law.”⁹⁵⁰ Such local laws are found inconsistent because if they were allowed to operate, they would “thwart the operation of the State’s overriding policy concerns.”⁹⁵¹

Applying these basic rules to the facts, the court found that Local Law number 21 was inconsistent with the state’s general law, “because it constitutes an attempt to regulate in a field preempted by the Labor Law.”⁹⁵² Such regulation, the court noted, may be either express or inferred. Such an inference may be found in a “declaration of State policy by the Legislature or from the legislative enactment of a comprehensive and detailed regulatory scheme in a particular area.”⁹⁵³ The second

948. *ILC*, 182 A.D.2d at 300, 588 N.Y.S.2d at 849.

949. *Id.*

950. *Id.*; see also *Robin v. Incorporated Village of Hempstead*, 30 N.Y.2d 347, 350, 285 N.E.2d 285, 286-87, 334 N.Y.S.2d 129, 131 (1972) (finding that “the State’s purpose and design was to pre-empt the subject of abortion legislation and occupy the entire field so as to prohibit additional regulation by local authorities in the same area”).

951. *ILC*, 182 A.D.2d at 300, 588 N.Y.S.2d at 849; see also *Floyd v. New York State Urban Dev. Corp.*, 33 N.Y.2d 1, 7, 300 N.E.2d 704, 706, 347 N.Y.S.2d 161, 164 (1973) (“local laws otherwise in conflict may not exhibit the operation of general laws”).

952. *ILC*, 182 A.D.2d at 301, 588 N.Y.S.2d at 850.

953. *Id.*; see also *Incorporated Village of Nyack v. Daytop Village, Inc.*, 78 N.Y.2d 500, 505, 583 N.E.2d 928, 930, 577 N.Y.S.2d 215, 217 (1991) (legislative intent to preempt an area “can be inferred from a declaration of policy or from a comprehensive or detailed scheme in a given area”); see also *Albany Area Builders Assoc. v. Town of Guilderland*, 74 N.Y.2d 372, 377,

department determined that the state's intent to preempt can be inferred in this case from the State's enactment of a comprehensive regulatory scheme in the labor law, and also by that law's endowing the Commissioner of labor with broad rule making authority.⁹⁵⁴

Labor Law section 27,⁹⁵⁵ to the extent to which it is not preempted by federal health and safety regulations, "regulates the adoption, implementation, and enforcement of safety and health standards for private employees in New York."⁹⁵⁶ Under section 27(2)(a), the Commissioner is authorized to adopt "standards which provide reasonable and adequate protection to the lives, safety or health of employees"⁹⁵⁷ Furthermore, under section 27(3), he is authorized to implement whatever regulations are necessary to "effectuate the purposes and provisions of this section."⁹⁵⁸ Finally, the legislative memorandum analyzing the enactment of this statute declared the purpose of section 27 was to "'authorize the Department of Labor to administer and enforce occupational and public safety standards.'"⁹⁵⁹

546 N.E.2d 920, 922, 547 N.Y.S.2d 627, 629 (1989) ("preemption applies both in cases of express conflict between local and State law and in cases where the State has evidenced its intent to occupy the field"); *Ba Mar v. County of Rockland*, 164 A.D.2d 605, 612, 566 N.Y.S.2d 298, 303 (2d Dep't 1991); *Oil Heat Inst. of Long Island v. Town of Babylon*, 156 A.D.2d 352, 353, 548 N.Y.S.2d 305, 306 (2d Dep't 1989); *New York State Court Assoc., Inc. v. City of New York*, 69 N.Y.2d 211, 217, 505 N.E.2d 915, 917, 513 N.Y.S.2d 349, 351, ("[I]t is enough that the legislature has impliedly evinced its desire to do so. The legislative intent to preempt need not be express."), *aff'd*, 487 U.S. 1 (1987); *Dougal v. County of Suffolk*, 102 A.D.2d 531, 532-33, 477 N.Y.S.2d 381, 382 (2d Dep't), *aff'd*, 65 N.Y.2d 665, 481 N.E.2d 254491 N.Y.S.2d 622 (1984).

954. *ILC*, 182 A.D.2d at 301, 588 N.Y.S.2d at 850.

955. N.Y. LAB. LAW § 27. (McKinney 1986). Section 27 states in relevant part:

Notwithstanding any other provision in this chapter, a safety or health standard promulgated under this section shall apply only to employees not covered by a federal occupational safety or health standard

Id.

956. *ILC*, 182 A.D.2d at 302, 588 N.Y.S.2d at 851.

957. N.Y. LAB. LAW § 27(2)(a) (McKinney 1986).

958. N.Y. LAB. LAW § 27(3) (McKinney 1986).

959. *ILC*, 182 A.D.2d at 302, 588 N.Y.S.2d at 851.

According to the court, other sections of the Labor Law also provided for comprehensive regulation. Section 4 regulates the “employment of minors in the workplace,”⁹⁶⁰ while Labor Law section 200⁹⁶¹ gives the Commissioner the authority to regulate the dangers created by machinery and other equipment.⁹⁶²

The appellate division determined that the Commissioner was given broad powers by section 21 of the Labor Law to regulate “workplace safety and health.”⁹⁶³ Specifically, he was given the power, by subsections 5 and 6 of the Labor Law, to regulate the procedures for voluntary compliance by employers and employees in providing a safe and healthy work environment.⁹⁶⁴ Furthermore, pursuant to Labor Law section 14,⁹⁶⁵ the Commissioner was given the power to set up branch offices of the Labor Department in locations chosen at his discretion.⁹⁶⁶ Moreover, the Commissioner was given other broad powers, such as the “authority to make . . . and terminate ‘variations’ from health and safety standards upon a showing of practical difficulties or unnecessary hardships,⁹⁶⁷ to inspect physical

960. *Id.* at 303, 588 N.Y.S.2d at 851; N.Y. LAB. LAW § 27(4) (McKinney 1986).

961. N.Y. LAB. LAW § 200 (McKinney 1986). Section 200 states in relevant part:

All places to which this chapter applies shall be so constructed, equipped . . . and conducted as to provide reasonable and adequate protection to the lives, health and safety of all persons employed therein or lawfully frequenting such places

Id.

962. *ILC*, 182 A.D.2d at 302, 588 N.Y.S.2d at 851.

963. *Id.* at 301, 588 N.Y.S.2d at 850.

964. N.Y. LAB. LAW § 21(5) and (6) (McKinney 1986).

965. N.Y. LAB. LAW § 14 (McKinney 1986).

966. *ILC*, 182 A.D.2d at 302, 588 N.Y.S.2d at 851.

967. N.Y. LAB. LAW § 30 (McKinney 1986). Section 30 states in relevant part:

- 1) If there shall be practical difficulties or unnecessary hardship in carrying out the provisions of this chapter relating to safety or health standards . . . the commissioner may make a variation from such requirements or order if the spirit of the provision, rule or code shall be observed and public safety secured.

Id.

premises⁹⁶⁸ and books and records,⁹⁶⁹ and to issue subpoenas and conduct hearings.”⁹⁷⁰

Due to such state statutes, the appellate division found a strong indication that the State Legislature “intended the field of workplace safety to be exclusively occupied by the Labor Law to the extent that it is not already regulated by the Federal Occupational Safety and Health Act of 1970.”⁹⁷¹ Moreover, the court held, the preemption was so extensive as to make Local Law number 21 “inconsistent,” as that term is used in New York Constitution, article IX, section 2(c)(ii) and Municipal Home Rule Law section 10(1)(ii), with the state Labor Laws.⁹⁷²

In so holding, the court rejected the County’s argument that by enacting Labor Law section 21(9), the State Legislature specifically desired that workplace safety be regulated by local law.⁹⁷³ section 21(9) authorizes the Commissioner to “enforce any lawful municipal ordinance, by-law or regulation relating to any place affected by the provisions of this chapter, not in conflict with

968. N.Y. LAB. LAW § 25 (McKinney 1986). Section 25 states in relevant part:

The commissioner . . . shall inspect every place which is, or which may have reasonable cause to believe is, affected by the provisions of this chapter, and they may in the discharge of their duties enter any such places.

Id.

969. N.Y. LAB. LAW § 26 (McKinney 1986). Section 26 states in relevant part:

All papers, books, records or other documents required to be kept by the provisions of this chapter . . . shall at all times be open for inspection of the commissioner and the officers and employees of the department

Id.

970. N.Y. LAB. LAW § 39 (McKinney 1986). Section 39 states in relevant part:

The commissioner . . . shall have power:

- 1) To issue subpoenas
- 2) To hear testimony and take or cause to be taken depositions of witnesses

Id.

971. *ILC*, 182 A.D.2d at 303, 588 N.Y.S.2d at 851.

972. *Id.*

973. *Id.*

provisions of this chapter.”⁹⁷⁴ The court, however, interpreted the “any place” provision as relating merely to local building, sanitation, and fire code, and not covering other safety regulations.⁹⁷⁵

The County also claimed that since the Labor Law is silent on the topic of regulation of VDT operation, it has the right to regulate on this specific subject matter.⁹⁷⁶ Furthermore, it argued that the court cannot find inconsistency simply because both local and state law are regulating on the “same general subject matter.”⁹⁷⁷ The court agreed with the County that silence by itself is not enough to find legislative intent to regulate.⁹⁷⁸ It likewise agreed that just because a local law has some general connection with the subject matter upon which the state statute has regulated, does not automatically vitiate it.⁹⁷⁹ But the appellate division declared that where a particular field is preempted by the state law—here, the field of employment safety—a local law on the same subject matter is inconsistent with the state’s interest “because it . . . prohibits conduct which the State law, although perhaps not expressly speaking to, considers acceptable or at least does not proscribe.”⁹⁸⁰ Therefore, the court held that since the Labor Law preempts the workplace safety field, its silence allows VDT operation without any special workers protection, and so, Local Law Number 21 is in direct conflict with the state directive, and is therefore, inconsistent.⁹⁸¹

Finally, the court concluded, if this local legislation was allowed to stand, it would interfere with the state’s goal “of foster-

974. N.Y. LAB. LAW § 21(9) (McKinney 1969).

975. *ILC*, 182 A.D.2d at 303, 588 N.Y.S.2d at 852; *see also* *People v. Town of Clarkstown*, 160 A.D.2d 17, 24, 559 N.Y.S.2d 736, 740 (2d Dep’t 1990) (reference in state regulation—18 N.Y.C.R.R. 417.3(h)—to local codes “merely establishes an adequate means of insuring that ancillary concerns such as safety, fire and health standards are met, unobtrusive to State goals”).

976. *ILC*, at 304, 588 N.Y.S.2d at 852.

977. *Id.*

978. *Id.*

979. *Id.*

980. *Id.* (quoting *Jancyn Mfg. Corp. v. County of Suffolk*, 71 N.Y.2d 91, 97, 518 N.E.2d 903, 905, 524 N.Y.S.2d 8, 10-11 (1987)).

981. *Id.*

ing a direct and cooperative relationship between New York State Department of Labor officials and employers.”⁹⁸² Accordingly, health and safety concerns must be addressed on a uniform state level, and not on a county-by-county level.⁹⁸³ The appellate division therefore affirmed the lower court’s decision, and remitted to the lower court for “entry of appropriate judgment.”⁹⁸⁴

Similar to the dictates of the New York Constitution, article IX, section 2(c), the Supremacy Clause of the United States Constitution⁹⁸⁵ provides for the federal preemption of inconsistent state laws. Likewise, congressional intent to supersede state law in a particular area may be explicitly provided in a statute or may be inferred from a pervasive scheme of federal regulation.⁹⁸⁶ Furthermore, when no intent on the part of Congress to occupy the field is evident, preemption of state law “may occur to the extent that state and federal law actually conflict.”⁹⁸⁷

In a recent Supreme Court case dealing with local regulations, *Wisconsin Public Intervenor v. Mortier*,⁹⁸⁸ a property owner who had applied for a permit for aerial spraying of pesticides from the Wisconsin town of Casey, and who had been denied the permit, challenged the local regulation of pesticides, claiming such regulation to be preempted by the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).⁹⁸⁹ FIFRA regulates the “production, labeling, sale and use of pesticides.”⁹⁹⁰ The plaintiff’s claim was that the local regulation of pesticides interfered with the federal goal of promoting a coordinated effort to regulate pesticides “solely on the federal and state levels.”⁹⁹¹ The Supreme Court disagreed, finding that FIFRA intended a partnership of local, as well as state and federal levels.⁹⁹²

982. *Id.* at 305, 588 N.Y.S.2d at 853.

983. *Id.*

984. *Id.* at 306, 588 N.Y.S.2d at 853.

985. U.S. CONST. art. VI.

986. *Wisconsin Pub. Intervenor v. Mortier*, 111 S. Ct. 2476, 2481 (1991).

987. *Id.* at 2482.

988. 111 S. Ct. 2476, 2481 (1991).

989. *Id.* at 2480.

990. *Id.* at 2479-80.

991. *Id.* at 2487.

992. *Id.*

Furthermore, the Court did not find that FIFRA “expressly or impliedly” precluded local regulation “with regard to local use.”⁹⁹³ Finally, due to the fact that the Court found no apparent conflict between the federal and the local pesticide regulation, it held that FIFRA did not preempt the local Wisconsin statute.⁹⁹⁴

Therefore, the New York State Constitution article IX, section 2(c), and its effect on local regulation, seem to be identical to that of the United States Constitution’s Supremacy Clause on state and local law.

993. *Id.*

994. *Id.*