AN OVERVIEW OF GOVERNMENTAL IMMUNITIES

A Tutorial and Update

State Government Immunities

Background

- Historically, sovereign immunity applied.
- Sovereign immunity for municipalities lost in 1962. Spanel v. Mounds View School Dist., 118 N.W.2d 795, 803 (Minn. 1962)
- State waived soverein immunity in 1976. Minn. Laws 1976, Ch. 331.

Exceptions to Waiver of Sovereign Immunity

- **Statutory Examples**: The Minnesota Tort Claim Act. Minn. Stat. § 3.736, subd. 3; The Municipal Tort Liability Act. Minn. Stat. § 466.03

- **Common Law Examples**: Official Immunity; Judicial and Quasi-Judicial Immunity

Statutory Discretionary Immunity Basics

- Recognized for State agencies and municipalities. Minn. Stat. § 3.736, subd. 3(b); Minn. Stat. § 466.03, subd. 6.
- Immune for claims based upon the performance of a "discretionary" function
- Immune even if discretion is abused.

Statutory Discretionary Immunity Basics

- Applies to governmental decisions involving the balance of policy considerations

- Distinction drawn between planning-level decisions (immune) and operational-level decisions (not immune). See Holmquist v. State, 425 N.W.2d 230, 232 (Minn. 1988)

- **Policy**: Separation of Powers

Planning-Level Decisions

- **Quintessential example**: the development of a policy, which requires the balancing of "social, political, or economical considerations." Nusbaum v. Blue Earth Cnty., 422 N.W.2d 713, 722 (Minn. 1988).

- Statutory discretionary immunity **does not extend** to professional or scientific judgments that do not involve policy considerations. Id.

Planning-Level Decisions

Determining what constitutes a planning-level decision is not always clear-cut. Cairl v. State, 323 N.W.2d 20, 23 (Minn. 1982) ("[A]lmost every act involves some measure of discretion.").

Planning-Level Decisions

Examples

- Deployment/utilization of police forces. Silver v. City of Minneapolis, 170 N.W.2d 206, 209 (Minn. 1969).
- Decision to release individual from state institution. Cairl v. State, 323 N.W.2d 20, 24 (Minn.1982).
- Roadway signage decisions. Steinke v. City of Andover, 525 N.W.2d 173, 176 (Minn.1994); Larson as Tr. for heirs of Lehner v. Schramel, No. A18-1861, 2019 WL 2416040, at *4 (Minn. Ct. App. June 10, 2019), review denied (Aug. 20, 2019).
- Negligent supervisory decisions. Gleason v. Metro. Council Transit Operations, 563 N.W.2d 309, 320 (Minn. Ct. App. 1997)

Additional Limits on Statutory Discretionary Immunity

- Does not apply to claims under the Minnesota Whistleblower Act. Janklow v. Minnesota Bd. of Examiners for Nursing Home Adm'rs, 552 N.W.2d 711, 718 (Minn. 1996)

- Does not apply to claims under the Minnesota Human Rights Act. Davis v. Hennepin Cnty., 559 N.W.2d 117, 122 (Minn. Ct. App. 1997)

Recent Cases on Statutory Discretionary Immunity

- Wenker v. Le Sueur Cty., No. A19-0011, 2019 WL 3294076, at *4 (Minn. Ct. App. July 22, 2019), review denied (Oct. 15, 2019) (holding statutory immunity does not apply to an "an established practice" without evidence of a deliberative policy-making process)
- Mathews v. City of Vill. of Minneto nka Beach, No. A18-0858, 2019 WL 1890565, at *4 (Minn. Ct. App. Apr. 29, 2019) (holding decision to certify a debt to Plaintiff's property taxes a policy-level decision)
- Washington v. State, No. A21-0224, 2021 WL 4059655, at *2 (Minn. Ct. App. Sept. 7, 2021) (holding DOC immune on negligent supervision claim, as well as claim based on single-officer transport policy)

Official Immunity Basics

- Shields individual public employees from state-law claims stemming from their discretionary acts
- Does not apply to “ministerial” acts
- Does not apply to willful or malicious conduct
- Vicarious official immunity is available (even if individual employee not named)

Official Immunity Basics

- Official immunity and other statutory immunities can overlap and co-exist. Jepsen as Tr. for Dean v. Cty. of Pope, 938 N.W.2d 60, 69 (Minn. Ct. App. 2019)

Official Immunity Basics

- **Policy**: to "protect[] public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." Elwood v. Rice Cnty., 423 N.W.2d 671, 678 (Minn. 1988)

- Protects policymaking, as well as operational decisions. Gleason v. Metro. Council Transit Operations, 582 N.W.2d 216, 220 (Minn. 1998)

- Concept of "discretion" is broader for official immunity. Watson by Hanson v. Metro. Transit Comm'n, 553 N.W.2d 406, 414 (Minn. 1996)

Ministerial Acts

- Official Immunity applies to discretionary, but not ministerial, decisions

- "An official's duty is ministerial when it is absolute, certain and imperative, involving merely execution of a specific duty arising from fixed and designated facts." Watson by Hanson v. Metro. Transit Comm'n, 553 N.W.2d 406, 414 (Minn. 1996)

- Example of ministerial act: following a directive or policy that requires no application of judgment. Policy must be "narrow"

Discretionary Acts

- A discretionary act is one that requires "the exercise of individual judgment in carrying out the official's duties." Kari v. City of Maplewood, 582 N.W.2d 921, 924 (Minn. 1998)

- Quintessential discretionary act is a police pursuit/chase because of split-second decision-making in an emergency

Distinguishing Ministerial from Discretionary

- The distinction is "subject to enigmatic application and occasional breakdown." Elwood v. Rice Cnty., 423 N.W.2d 671, 677 (Minn. 1988)
- "Simple and direct" duties are ministerial. Williamson v. Cain, 245 N.W.2d 242, 244 (Minn. 1976)
- "Planning level" conduct is discretionary. Larson v. Independent School Dist. No. 314, Braham, 289 N.W.2d 112, 120 (Minn.1979)

Ministerial Action Still Entitled to Official Immunity When . . .

- The plaintiff is really challenging an established government protocol, which was correctly followed by the government employee

- Anderson v. Anoka Hennepin Indep. Sch. Dist. 11, 678 N.W.2d 651, 660 (Minn. 2004) ("[Employee] does not forfeit official immunity because his or her conduct was ministerial if that ministerial conduct was required by a protocol established through the exercise of discretionary judgment that would itself be protected by official immunity.")

Exception for Malicious Conduct

- Immunity is lost is action if taken willfully or maliciously
- Malice "means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or otherwise stated, the willful violation of a known right." Carnes v. St. Paul Union Stockyards Co., 205 N.W. 630, 631 (Minn. 1925)
- The terms "willful" and "malicious" are synonymous. Rico v. State, 472 N.W.2d 100, 107 (Minn. 1991)

Malice is A High Standard

- Must have reason to know that the act is prohibited at the time the act takes place. Pahnke v. Anderson Moving & Storage, 720 N.W.2d 875, 884 (Minn. Ct. App. 2006)

- "Malice is not negligence." Vassallo ex rel. Brown v. Majeski, 842 N.W.2d 456, 465 (Minn. 2014)

- Example of malice: Soucek v. Banham, 503 N.W.2d 153, 158-61 (Minn. Ct. App. 1993) (finding a question of material fact pertaining to malice when there was direct evidence, through sworn testimony, indicating that officers acted intentionally and knowingly in shooting a family pet)

Official Immunity and Defamation

- Official Immunity does not apply to defamation. Bauer v. State, 511 N.W.2d 447, 449 (Minn.1994)

- Rather, look to doctrines of absolute and qualified privilege as best defenses. Johnson v. Dirkswager, 315 N.W.2d 215, 221 (Minn. 1982)

Official Immunity and Private Sector Duties

- The Minnesota Supreme Court has held that official immunity does not apply to professional, medical decision-making. Terwilliger v. Hennepin Cnty., 561 N.W.2d 909, 913 (Minn. 1977) (treatment decisions made by psychiatrists)

- This rationale has since been haphazardly applied. Bailey v. City of St. Paul, 678 N.W.2d 697, 701 (Minn. Ct. App. 2004) (applying immunity to treatment given by ambulance crew)

Official v. Qualified Immunity

- **The Key Distinction**: Official Immunity retains a subjective component in assessing the issue of malice, while qualified immunity uses an objective "reasonableness" standard. Gleason v. Métropolitain Council Transit Operations, 563 N.W.2d 309, 318 (Minn. Ct. App. 1997)

- There is no malice when: (1) the conduct was "legally justified under the circumstances"; (2) the conduct was "taken with subjective good faith"; or (3) "there was no basis for knowing the conduct would violate the plaintiff's rights." Id.

Recent Cases on Official Immunity

- Jepsen as Tr. for Dean v. Cty. of Pope, 966 N.W.2d 472, 475 (Minn. 2021) (holding Reporting of Maltreatment of Minors Act, which has its own immunity provision, abrogated official immunity)
- Briden v. Transit Team, Inc., No. A21-0487, 2022 WL 200358, at *3 (Minn. Ct. App. Jan. 24, 2022) (helpful discussion of discretionary v. ministerial as well as helpful analysis on whether immunity extends to independent contractors in transit scenario)
- Welters v. Minnesota Dep't of Corr., 968 N.W.2d 569, 587 (Minn. Ct. App. 2021) (holding material fact question on whether the manner of handcuffing and length was ministerial or discretionary).

Helpful Cases Discussing Official and Statutory Immunity

- J.W. ex rel. B.R.W. v. 287 Intermediate Dist., 761 N.W.2d 896, 902-03 (Minn. Ct. App. 2009) (policy-level decision not to disclose child's prior history of sexual behavior entitled to statutory immunity, failure to implement bus seating policy not entitled to official immunity)

- In re Alexandria Acc. of Feb. 8, 1994, 561 N.W.2d 543, 547-49 (Minn. Ct. App. 1997) (planning-level decisions pertaining to snow plowing entitled to statutory immunity, snow plow driving decisions entitled to official immunity)

Other State Law Immunities To Be Aware Of

- **Absolute Judicial and Quasi-Judicial Immunity**. Dziubak v. Mott, 503 N.W.2d 771, 775-76 (Minn. 1993); Myers v. Price, 463 N.W.2d 773, 775 (Minn. Ct. App. 1990) (tasks "integral to judicial process")

- **Attorney Immunity**. McDonald v. Stewart, 182 N.W.2d 437, 440 (Minn. 1970) ("[A]n attorney acting within the scope of h[er] employment as [an] attorney is immune from liability to third persons for actions arising out of that professional relationship.")

Other State Law Immunities To Be Aware Of

- **List of various immunities for municipalities**: See Minn. Stat. § 466.03

- **List of various immunities for the State**: See Minn. Stat. § 3.736

THANK YOU!

GOVERNMENTAL IMMUNITIES: QUALIFIED AND SOVEREIGN IMMUNITY

Scott Ikeda
Assistant Attorney General

March 9, 2022

QUALFIED IMMUNITY: Legal standard

- “We therefore hold that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982).

- “[I]mmunity protects ‘all but the plainly incompetent or those who knowingly violate the law.” *White v. Pauly*, 137 S.Ct. 548, 551 (2017).

QUALIFED IMMUNITY: When might it apply?

- Applies to:
  - Section 1983 individual capacity claims against state or local public officials
  - *Bivens* claims against federal officials

- What Doesn't Get Qualified Immunity?
  - State law constitutional and tort claims
  - Official capacity claims
  - Private parties

QUALIFIED IMMUNITY: Why have it?

- “Qualified immunity gives government officials breathing room to make reasonable but mistaken judgments about open legal questions.” *Ashcroft v. al-Kidd*, 563 U.S. 731, 743 (2011).
  - Unlike Minnesota’s Tort Claims Act, Section 1983 claims don’t limit damages, including punitive damages, and allow attorneys’ fees

- Public policy
  - “[N]ecessary to preserve their ability to serve the public good or to ensure that talented candidates were not deterred by the threat of damages suits from entering public service.” *Wyatt v. Cole*, 504 U.S. 158, 156 (1992).

QUALIFIED IMMUNITY: How do I brief it?

- Two Questions:
  - (1) “Taken in the light most favorable to the party asserting the injury, do the facts alleged show the officer’s conduct violated a constitutional right?” *Saucier v. Katz*, 533 U.S. 194, 201 (2001).
  - (2) Did the conduct “violate clearly established statutory or constitutional rights of which a reasonable person would have known”? *White v. Pauly*, 137 S.Ct. 548, 551 (2017).
- The court can answer either question first. *Pearson v. Callahan*, 555 U.S. 223, 236 (2009).

QUALIFIED IMMUNITY: Clearly Established?

- "A Government official's conduct violates clearly established law when, at the time of the challenged conduct, '[t]he contours of [a] right [are] sufficiently clear' that every 'reasonable official would have understood that what he is doing violates that right." *Ashcroft v. al-Kidd*, 563 U.S. 731, 741 (2011).

- "We do not require a case directly on point, but existing precedent must have placed the statutory or constitutional question beyond debate." *Ashcroft v. al-Kidd,* 563 U.S. 731, 741 (2011).
  - "[T]he clearly established law must be 'particularized' to the facts of the case." *White v. Pauly*, 137 S.Ct. 548, 552 (2017).
  - "[T]he clearly established right must be defined with specificity." *City of Escondido v. Emmons*, 139 S.Ct. 500, 503 (2019)
  - And the law had to be clearly established at the time of the event. *Brosseau v. Haugen*, 543 U.S. 194, 200 n.4 (2004) (decisions that postdate the conduct "could not have given fair notice to Brosseau and are of no use in the clearly established inquiry").

QUALIFIED IMMUNITY: When facts were known?

- Qualified immunity analysis is limited to what the government official knew at the time the action was taken.
  - *Hernandez v. Mesa*, 137 S.Ct. 2003, 2007 (2017):
    - Case about a Border Patrol Agent (physically in the United States) who shot and killed a 15-year-old Mexican national (physically located in Mexico)
    - Court of Appeals relied on the fact that the plaintiff "was 'an alien who had no significant voluntary connection to … the United States.'"
    - Supreme Court noted that the officer did not know the plaintiff's "nationality and the extent of his ties to the United States"
    - "Facts an officer learns after the incident ends—whether those facts would support granting immunity or denying it—are not relevant."

SOVEREIGN IMMUNITY: State Statutory Claims

- State is immune from statutory claims unless immunity is waived"
- "[I]mmunity may be waived only if the state is expressly mentioned in a claim-creating statute or if the legislature's intention to waive the state's sovereign immunity otherwise is plain, clear, and unmistakable." *Nichols v. State*, 842 N.W.2d 20, 24 (Minn. Ct. App. 2014).

- Two Ways To Waive:
  - (1) Was the State named in the text of the statute?
  - (2) If not, did the legislature "plainly, clearly, and unmistakably express[] its intention to waive the state's sovereign immunity so as to 'leave no doubt' that the state is subject to suit under a statute." *Nichols*, 842 N.W.2d at 27.
    - Broad and general language that *could* include the State makes it less likely that the State can be sued. *Nichols*, 842 N.W.2d at 27-28.

SOVEREIGN IMMUNITY: Eleventh Amendment

- "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."

SOVEREIGN IMMUNITY: Suit in federal court

- Even though the language of the Eleventh Amendment does not include suits against a state by its own citizens, the Supreme Court "has consistently held that an unconsenting State is immune from suits brought in federal courts by her own citizens as well as by citizens of another State." *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974).
  - "a suit by private parties seeking to impose a liability which must be paid from public funds in the state treasury is barred by the Eleventh Amendment." *Edelman*, 415 U.S. at 663.

SOVEREIGN IMMUNITY: Suit in federal court (cont.)

- But, a state official can be sued in federal court in their official capacity for prospective injunctive relief. *Edelman v. Jordan*, 415 U.S. 651, 665 (1974); *Ex Parte Young*, 209 U.S. 123 (1908).
  - "[A]ncillary effect on the state treasury is a permissible and often an inevitable consequence of the principle announced in Ex Parte Young" *Edelman*, 415 U.S. at 668.

SOVEREIGN IMMUNITY: State law

- Cannot sue the state, state agency, or state official in federal court for violating state law.
  - *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 106 (1984): "A federal court's grant of relief against state officials on the basis of state law, whether prospective or retroactive, does not vindicate the supreme authority of federal law. On the contrary, it is difficult to think of a greater intrusion on state sovereignty than when a federal court instructs state officials on how to conform their conduct to state law. Such a result conflicts directly with principles of federalism that underlie the Eleventh Amendment. We conclude that *Young* and *Edelman* are inapplicable in a suit against state officials on the basis of state law."
  - Also includes pendent jurisdiction (*Pennhurst*, 465 U.S. at 120-21)

IMMUNITY: When to raise the defense?

- Question should be resolved as early as possible in the litigation, including by motion to dismiss, if possible.
  - Qualified immunity is more often resolved on summary judgment, although this is not always the case
  - But sovereign immunity issues are often apparent in the complaint

IMMUNITY: Discovery

- Seek early resolution to avoid or limit burdens of discovery
  - Consider a protective order or motion to stay discovery
    - *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982): "Until [the] threshold immunity question is resolved, discovery should not be allowed."
    - *Baker v. Chaplin*, 517 N.W.2d 911, 914 n.3 (Minn. 1994): "Discovery ordinarily should not be allowed until this threshold immunity question is resolved."
- Or consider arguing that discovery should be limited to facts related to the immunity defense.
  - *Anderson v. Creighton*, 483 U.S. 635, 646 n. 6 (1987): "Of course, any such discovery should be tailored specifically to the question of Anderson's qualified immunity."

IMMUNITY: Interlocutory appeal

- If denial of immunity is a legal question, consider bringing an interlocutory appeal.
  - Federal authority: *Mitchell v. Forsyth*, 472 U.S. 511, 529 (1985).
  - State authority: *Anderson v. City of Hopkins*, 393 N.W.2d 363, 364 (Minn. 1986) (adopting *Mitchell* rule)

- Multiple appeals from a motion to dismiss and summary judgment are at least allowed in federal court. *Behrens v. Pelletier*, 516 U.S. 299, 309 (1996).
  - *Bouley v. Windschitl*, 2008 WL 73297 (Minn. Ct. App.) (unpublished) quoting *Behrens*: "holding that despite a prior appeal, if a party seeks summary judgment on immunity grounds and the court denies the motion, the party can take an immediate interlocutory appeal"

GOVERNMENTAL IMMUNITIES

EXAMPLE 1:

- Plaintiff sues Defendant Commissioner in her official and individual capacity for an injunction and damages for unreasonable search and seizure in federal court.

EXAMPLE 2:

- SAME FACTS, EXCEPT ADD A MINNESOTA STATUTORY VIOLATION: Plaintiff sues Defendant Commissioner in her official and individual capacity for injunction and damages for unreasonable search and seizure and violation of a Minnesota statute in federal court.

EXAMPLE 3

- Plaintiff sues Defendant Commissioner in her official capacity and alleges negligence claim challenging a policy and statutory violation in state court.

EXAMPLE 4

- Plaintiff sues Defendant Commissioner in her official and individual capacity for negligent failure to follow policy and statutory violation in state court.

LOCAL CONTROL VERSUS STATE PREEMPTION

Can Local Government Ordinances Designed to Address Local Problems Survive Attacks on State-law Preemption Grounds?

Courtesy of Meet Minneapolis

In this presentation

- Why local governments are enacting local ordinances that address
- The legal basis for enacting ordinances
- Types of state-law preemption in Minnesota
- Case studies for each type of preemption
  - Successful record building
  - Partnerships for success
  - Additional cases on the horizon or in other jurisdictions
- Related issue of extraterritoriality

Why are ordinances being enacted?

Intractable issues

Frustration with what some people view as gridlock in state legislature resulting in a failure to address pressing concerns such as affordable housing, income inequality, and rights and interests of workers

Why are ordinances being enacted?

- Local elected officials may be in the best position to determine what health, safety and welfare regulations best serve their particular community

- Cities are often laboratories for public policy approaches to the challenges that face residents and businesses

Intractable issues

Access to paid leave

Latest

The Atlantic

HEALTH

Poor and Hispanic Workers Are Least Likely to Have Sick Days

And most of the people who prepare your food don't get paid time off when they get sick, either.

By Olga Khazan

Workers Without Paid Sick Leave Less Likely To Take Time Off For Illness Or Injury Compared To Those With Paid Sick Leave

LeaAnne DeRigne, Patricia Stoddard-Dare, and Linda Quinn

AFFILIATIONS

Impact of lack of access to paid leave

What Is "R-naught"? Gauging Contagious Infections

The R0 (reproduction number) of SARS-CoV-2 variants and other diseases. The higher the R0 number, the more contagious the disease is. Source: Imperial College London, Lancet, Australian Government.

Inflation has pushed families near economic collapse

People in cities are struggling

No wonder it's hard to find a new home: The Twin Cities has the worst housing shortage in the nation

After more than a decade of underbuilding, the lack of housing poses a growing threat to the region's economic growth.

Lack of safe affordable housing

MPRnews Sections ⌄ Members ⌄ More ⌄

ON AIR 0:00
MPR News with Kerri Miller

Section Wait: Federal housing vouchers hard to get, hard to use

Max Nesterak Eagan July 18, 2018 9:00 AM

Purpose of preemption doctrines

- Tension between needing local solutions to challenges, versus the need for uniformity for businesses that employ people, provide a tax base, drive the economy

- Purpose of preemption doctrines is to strike the proper balance between these interests

MN Home Rule vs. Statutory Cities

- In Minnesota, a city may be a statutory city (organized and operating under state statutes) or a home rule charter city (organized and operating as under charter adopted by voters). 107 of Minnesota's 853 cities are home rule cities (including Minneapolis). Home rule charter cities can exercise any powers charters as long as they do not conflict with state laws.

- "[I]n matters of municipal concern, home rule cities have all the legislative power possessed by the legislature of the state, save as such power is expressly or impliedly withheld. The adoption of any charter provision contrary to the public policy of the state, as disclosed by general laws or its penal code, is also forbidden." *State ex rel Town of Lowell v. City of Crookston*, 91 N.W.2d 81, 83 (Minn. 1958).

Minneapolis
City of Lakes

3 types of state preemption in MN

1. Express preemption

The legislature expressly declares that state law shall prevail over the ordinance

2. Conflict Preemption

The ordinance conflicts with state law

3. Field/implied preemption

The legislature has comprehensively addressed the subject matter such that state law now occupies the field

1. Express Preemption

- Shifting politics

- Conservative lawmakers traditionally against centralization of power, believed control ought to be as local as possible as the government closes is the most responsive to the people, also as a matter of federalism. Seen that in school choice, abortion, tax statutes

- More recently, conservative state legislatures have been using preemption statutes to restrict the ability of local government to mandate paid sick time, raise the minimum wage, regulate guns, or pass civil rights ordinances protecting transgender individuals

Express preemption examples

471.633 FIREARMS.

The legislature preempts all authority of a home rule charter or statutory city including a city of the first class, county, town, municipal corporation, or other governmental subdivision, or any of their instrumentalities, to regulate firearms, ammunition, or their respective components to the complete exclusion of any order, ordinance or regulation by them except that:

(a) a governmental subdivision may regulate the discharge of firearms; and

(b) a governmental subdivision may adopt regulations identical to state law.

Local regulation inconsistent with this section is void.

History: *1985 c 144 s 1*

Minneapolis plastic bag ban halted by state lawmakers

Brandt Williams May 31, 2017 9:42 PM

Attempted express preemption

On May 25, 2017, the Minnesota Legislature passed a bill that expressly preempted any "ordinance, local resolution, or local policy requiring an employer to provide either paid or unpaid leave time."

Minn. S.F. 3, Ch. 2, Art. 22, sec. 1, subd. 2(b).

On May 30, 2017, Governor Mark Dayton vetoed the bill:

"The role of state government is to set minimum standards for workplace protections, wages, and benefits, not maximums. Should local officials, who were elected by their constituents in their communities, approve higher wage and benefit levels to meet the needs of their residents, they ought to retain the right to do so."

2. Conflict Preemption

- A conflict between an ordinance and state law will render an ordinance invalid only if “both the ordinance and the statute contain express or implied terms that are irreconcilable with each other.” *Mangold Midwest Co. v. Vill. of Richfield*, 143 N.W.2d 813, 816 (Minn. 1966).

- A conflict exists when the ordinance “permits what the statute forbids” or the ordinance “forbids what the statute *expressly* permits.” *Id.* (emphasis added). There is no conflict where the ordinance “though different, is merely additional and complementary to or in aid and furtherance of the statute.” *Id.* at 817.

Examples of conflict preemption

State v. City of Duluth, 159 N.W. 792 (Minn. 1916). State statute set strict standards for liquor distribution. City of Duluth passed an ordinance banning sale of liquor in the city. The plaintiff applied for a license to sell liquor and when the City of Duluth denied him, he sued the City, arguing that Duluth's ordinance was in conflict with the state statute.

The Minn. Supreme Court said there is no conflict.

- Not irreconcilable
- Ordinance did not permit what the statute forbade, or forbid what the statute expressly permitted
- Even though the statute implicitly permitted the conduct prohibited b the local regulation

Examples of conflict preemption

Bicking v. City of Minneapolis, 891 N.W.2d 304 (Minn. 2017).

Voters in Minneapolis had gotten enough signatures to put a charter amendment on the ballot, to require police officers to carry their own liability insurance and pay certain premiums.

The City Council refused to place it on the ballot because it conflicted Minn. Stat. § 466.07 which provided in relevant part: "a municipality…shall defend and indemnify any of its officers and employees…for damages, including punitive damages, claimed or levied against the officer or employee".

The Minnesota Supreme Court agreed with the City, concluding that the ordinance and the statute contain express or implied terms that are irreconcilable with each other.

3. Implied/Field Preemption

-Implied or Field preemption occurs only when state law "fully occupies a particular field of legislation, [and] there is no room for local regulation." Language is from the primary case, *Mangold Midwest Co. v. Richfield*, 143 N.W.2d 813 (1966).

-The Legislature's intent to occupy the field may be found in statements of purpose or in the uniform and comprehensive character of the statutory scheme.

3. Implied/Field Preemption

Four Mangold factors:

(1) What is the subject matter being regulated?

(2) Has the subject matter been so fully covered by state law as to have become solely a matter of state concern?

(3) Has the Legislature in partially regulating the subject matter indicated that it is a matter solely of state concern?

(4) Is the subject matter itself of such a nature that local regulation would have unreasonably adverse effects upon the general populace of the state?

Examples of field/Implied preemption

Field occupied: *City of Birchwood Vill. v. Simes*, 576 N.W.2d 458 (Minn. App. 1998) – Village on White Bear Lake enacted an ordinance limiting boats moored in the city to 18 feet long/6 feet wide. A lady bought a big boat and tied it up in Birchwood Village. The village told her to remove it, she refused, and village sought injunction.

-The Court held that the broad range of powers the legislature had given to a conservation district fully occupied the field and therefore impliedly preempted local ordinances. *Note: Often boat ordinances are impliedly preempted.*

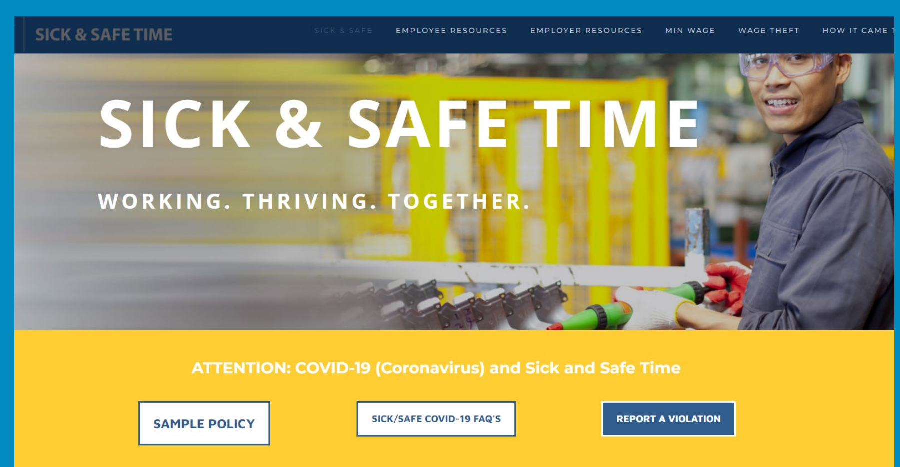
Examples of field/Implied preemption

Field not occupied: *State v. Westrum,* 380 N.W.2d 187 (Minn. App. 1986). A vendor at the Uptown Art Fair was found operating a food-vending booth without a city permit, but was licensed by the state. He was convicted of violating the ordinance. The Court of Appeals held that the state had not implied an intent to occupy the field. The Court noted that food at local fairs is primarily an area of local concern for the local populace.

Related: "peculiarly local concern."

Recent preemption cases

Two ordinances the City of Minneapolis enacted about 5 years ago to try to address two vexing and intractable issues



	100 or Fewer Employees Small Business	More than 100 Employees Large Business
Jan. 1, 2018	—	$10.00
July 1, 2018	$10.25	$11.25
July 1, 2019	$11.00	$12.25
July 1, 2020	$11.75	$13.25
July 1, 2021	$12.50	$14.25
July 1, 2022	$13.50	$15.00*
July 1, 2023	$14.50	
July 1, 2024	Equal to Large* Business	

*Increases to account for inflation, every subsequent January 1st.

Minneapolis Sick and Safe Time

City set out to study access to paid leave for illness in 2015, and learned:

- Only 29% of people in service jobs (food prep/serving, health care support, and personal care) had paid sick leave.
- During the H1N1 flu pandemic, an estimated 133,388 working in Minneapolis did not have paid sick leave, including approximately 15,167 health workers, and approximately 15,551 food prep or service workers.
- “R0” score

Sick and Safe Time

The R0 (reproduction number) of SARS-CoV-2 variants and other diseases. The higher the R0 number, the more contagious the disease is. Source: Imperial College London, Lancet, Australian Government.

Sick and Safe Time ordinance

- City enacted an ordinance, first starting with detailed factual findings underlying the ordinance. This goes to establishing the particularly local need for the ordinance. City also explicitly explained the ordinance's purpose. Goes to establish the subject of the matter for a preemption analysis.
- The ordinance covers employees who work at least 80 hours per year in the City of Minneapolis for an employer with six or more employees
- Must provide at least one hour of sick time earned per 30 hours worked

Sick and Safe Time ordinance

- Ordinance applies if employee works at least 80 hours in Minneapolis, regardless of the location of the employer.
- Otherwise would not adequately protect public health because of nature of illness.

- May use time for their own or and certain family members' illness, injury or health conditions; preventative or diagnosis, or time off for victims of domestic abuse, sexual assault and stalking.

Sick and Safe Time lawsuit

- Minnesota Chamber of Commerce, Graco Inc., and others sued the City to enjoin the sick and safe time ordinance.
- Argued conflict and field preemption, and allegedly impermissible extraterritorial effect because it applied to employers who were physically located outside Minneapolis, although their employers worked in Minneapolis.
- Hennepin County Judge Mel Dickstein ruled that the ordinance was not preempted, but did enjoin its enforcement against employers located outside of the City.

Sick and Safe Time conflict preemption

- Plaintiff argued that Minn. Stat § 181.9413 conflicted with the ordinance because the statute said that **<u>if</u>** an employer provides sick time benefits to employees, an employer must allow employee to use time to care for certain relatives, and permit use for time needed due to domestic abuse, sexual assault, or stalking. Chamber argued that the statute says "if" provided, it was express permission from the Legislature for employers to refuse to provide paid leave, and therefore was in conflict with the ordinance.
- The Minnesota Supreme Court held that there was no conflict, and noted that just because the ordinance was stricter than the statute, there was no conflict because "the additional terms only further the policy underlying the statute rather than posing an irreconcilable conflict."

Minneapolis
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Sick and Safe Time field preemption

- On the issue of field preemption, the Supreme Court applied the four *Mangold* factors.
- The Court concluded that the Legislature had not fully covered the subject matter of employer provided sick and safe time.
- The Court found no expression of legislative intent showing the legislature intended to occupy the field by creating a comprehensive or uniform statutory scheme.
- The Court found no language in the statute showing paid leave was solely a matter of state concern.
- And finally the Court held that the ordinance would not have an unreasonably adverse effect on the general population of the state.
- Considered together: no field preemption

Sick and Safe Time extraterratoriality

- On the issue of extraterritoriality, the Supreme Court disagreed with the district court.
- The Court looked to the purpose of the ordinance
- Court also found significant that municipalities have “wide discretion” to use their police power to regulate matters of public health – especially with respect to conditions affecting public health and safety.
- Finally the Court held that the primary effect of the Ordinance is also to regulate activity within the geographic limits of the City of Minneapolis.

Why Minimum Wage Ordinance

Cost of Living: Hennepin, Blue Earth, and Stevens Counties

Based on a family with one full-time adult worker, and one part-time adult worker, and one child

County	Annual Cost of Living
Hennepin County, Ranked 2nd out of 87 MN Counties in Annual Cost of Living	$61,777
Blue Earth County, Ranked 44th out of 87 MN Counties in Annual Cost of Living (Median)	$45,080 (Median)
Stevens County, Ranked 87th out of 87 MN Counties in Annual Cost of Living	$39,807

$0 $10,000 $20,000 $30,000 $40,000 $50,000 $60,000 $70,000

MN DEED Data reflect a 55.19% difference in the annual cost of living between Hennepin and Stevens Counties.

Data obtained from *Cost of Living in Minnesota*, mn.gov/deed/data/data-tools/col. Based on cost of living data compiled by the Minnesota Department of Employment and Economic Development (DEED), Labor Market Information, 2017.

Minimum Wage Ordinance Findings

- Minneapolis has by far the most residents in the state with incomes below the federal poverty level. There are over 84,000 people in Minneapolis with incomes below the federal poverty level, which is over 20,000 more people than the next closest city in the state.
- The living wage (the amount needed to meet basic needs) in Hennepin County for a single person is $15.25 per hour. The living wage for a typical size household in Hennepin County of two adults and one child is $19.80 per hour.
- ,48% of workers in Minneapolis, or approximately 150,000 people, earn less than a living wage.
- An increase in the minimum wage to $15.00 per hour would benefit 23% of workers in Minneapolis or approximately 71,000 people.

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Mpls Minimum Wage Ord.

	Small Business (100 or Fewer Employees)	Large Business (More than 100 Employees)
January 1, 2018	N/A	$10.00
July 1, 2018	$10.25	$11.25
July 1, 2019	$11.00	$12.25
July 1, 2020	$11.75	$13.25
July 1, 2021	$12.50	$14.25
July 1, 2022	$13.50	$15.00*
July 1, 2023	$14.50	
July 1, 2024	Equal to large businesses*	

* Increases to account for inflation, every subsequent January 1, based on a statutory inflation rate. See M.C.O. § 40.390 (e), referencing Minn. Stat. § 177.24, Subdivision 1(f).

Minimum Wage Ordinance Opinion

- Conflict preemption: the plaintiff argued that there was a conflict, because ordinance forbids what the state minimum wage statute expressly permits: arguing that the statute says employers must pay at least a certain hourly wage. Since the ordinance required employer to pay more, it forbids what the statute expressly permits, and therefore conflicts with the statute.
- The Supreme Court held that because the Legislature used the phrase “at least,” it clearly contemplated the possibility of higher hourly rates and was not in conflict. It held that the ordinance, though different, is merely additional and complementary to or in aid and furtherance of the statute.”

Minimum Wage Ordinance Opinion

- On the issue of field preemption, the Court held that none of the Mangold factors indicated that the Legislature intended to occupy the field of minimum wage. Most significantly, the Court noted that the phrase “must pay at least” indicated that there could be other regulation increasing the minimum wage.

- On the issue of local ordinances being burdensome for business, the Court held that varied local regulation may be restrictive to businesses, it does not arise to the level of an unreasonably adverse effect on the state to impact the field preemption analysis.

Upcoming case - Section 8 vouchers

- Housing choice vouchers are a federal housing assistance called Section 8. Renters using housing choice vouchers have a portion of their rent payments subsidized by the government.
- Under federal law, participation in Section 8 is voluntary for both landlords and tenants. For years, voucher holders have consistently reported difficulty finding landlords who accept Section 8 housing choice vouchers.

Upcoming case - Section 8 vouchers

- City amended its ordinance about discrimination in real estate. Added to list of prohibited reasons for refusal to rent such as race, religion, disability, and so on, to include "because of . . . any requirement of a public assistance program."
- The ordinance also includes an affirmative defense of undue hardship, and exempts certain groups of landlords.

Upcoming case - Section 8 vouchers

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- Group of landlords have sued, alleging state-law preemption… stay tuned!

Tips: enactment

- Do your research beforehand and analyze any preemption concerns
- Invoke your municipal powers for protecting health, safety and welfare
- Be specific in your factual findings and purpose connecting those to strong municipal powers
- The general reception of your ordinance may be improved if your ordinance follows a thorough and even-handed public process that includes presumed opponents, and thoughtful limits in your ordinance

Tips: It’s good to have friends

Sick and Safe Time Amici	Minimum Wage Amici
League of Minnesota Cities	League of Minnesota Cities
A Better Balance	National Employment Law Project
Take Action Minnesota	15 Now Minnesota
CTUL	CTUL
SEIU Local 26	Minnesota Dept. of Labor and Industry
Minnesota Dept. of Labor and Industry	

More information

http://minimumwage.minneapolismn.gov/

http://sicktimeinfo.minneapolismn.gov/

Questions?

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AN OVERVIEW OF FEDERAL PREEMPTION OF STATE LAW

What is Preemption?

- Under the preemption doctrine, valid federal law preempts (i.e. supplants or supersedes) conflicting state laws.

Constitutional Source of Preemption Doctrine

- The Supremacy Clause provides: "This Constitution, and the laws of the United States . . . shall be the supreme law of the land." Art. VI, cl. 2.

Judicial Foundation of Federal Supremacy/Preemption

Gibbons v. Ogden, 22 US 1 (1824).

- "But the framers of our constitution foresaw this state of things, and provided for it, by declaring the supremacy not only of itself, but of the laws made in pursuance of it . . . . ***In every such case, the act of Congress, or the treaty, is supreme; and the law of the State, though enacted in the exercise of powers not controverted, must yield to it."***

Where Does Preemption Arise?

- Preemption arises in areas of **concurrent federal and state power.**
- Federal government has the ability in areas of concurrent power to preempt the states from regulating in areas in which the states would otherwise be able to pursuant to their general police power.
- Preemption does not arise in areas where exclusivity of either Federal or State power is established.

Practice Areas In Which Preemption Issues May Arise

- Employment (FLSA, ERISA)
- Products Liability, Health & Safety Regulations
- Banking and Financial Regulation
- Public Utilities
- Transportation
- Any area where there is a concurrent exercise of state and federal power.

Intent of Congress

- "[T]he purpose of Congress is the ultimate touchstone in every pre-emption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).

Presumption Against Preemption

- "[B]ecause the States are independent sovereigns in our federal system, we have long presumed that Congress does not cavalierly pre-empt state-law causes of action. In all pre-emption cases, and particularly in those in which Congress has "legislated … in a field which the States have traditionally occupied," 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." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, (1996)(quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).

What Can Preempt?

Valid federal law will preempt inconsistent state laws, including:

- **Statutes passed by Congress**. *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312 (2016)(preemptive effect of federal statute, ERISA).
- **Administrative Rules issued by Federal Agencies.** *Fid. Fed. Sav. & Loan Ass'n v. de la Cuesta*, 458 U.S. 141 (1982)("Federal regulations have no less preemptive effect than federal statutes.")
- **Treaties and Executive Agreements**. *See El Al Israel Airlines, Ltd. v. Tsui Yuan Tseng*, 525 U.S. 155 (1999.)(preemptive effect of a treaty).

What Can Be Preempted?

- State laws passed by State Legislature
- Administrative Rules issued by State Agencies
- State Common Law
- Ordinances and Local Regulations

Types of Preemption

- Express Preemption
- Implied Preemption
  - Field Preemption
  - Conflict Preemption

Types of Preemption

- “Pre-emption may be either expressed or implied, and is compelled whether Congress’ command is explicitly stated in the statute’s language or implicitly contained in its structure and purpose. Absent explicit pre-emptive language, we have recognized at least two types of implied preemption: field pre-emption, where the scheme of federal regulation is so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it, and conflict pre-emption, where compliance with both federal and state regulations is a physical impossibility, or where state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.” *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88 (1992).

Express Preemption

- Express preemption occurs where Congress includes a clause in a statute explicitly stating its intent to preempt state law.
- In theory, this should simplify the preemption analysis, because the intent of congress is explicit and does not need to be inferred.
- “Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not pre-empted.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504 (1992)

Examples of Express Preemption Provisions

- General Example: "No state shall adopt or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to [_________________]." *See* James T. O'Reilly, Federal Preemption of State and Local Law: Legislation, Regulation and Litigation 53 (2006).
- ERISA's express preemption clause: ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a).

Field Preemption

- Congress may preempt state law by "occupying the field."
- "States are precluded from regulating conduct in a field that Congress has determined must be regulated by its exclusive governance. Intent can be inferred from a framework of regulation 'so pervasive. . .that Congress left no room for the States to supplement it' or where 'a federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.'" *Arizona v. United States*, 567 U.S. 387 (2012)(quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218 (1947).
- The consequences of field preemption are considerable – even voiding state laws that are **consistent** with the federal scheme.

Examples of Field Preemption

- The Supreme Court has held that federal law occupies several regulatory fields, including:
  - Nuclear safety (*English v. Gen. Elec. Co.,* 496 U.S. 72 (1990)).
  - Aircraft noise (*City of Burbank v. Lockheed Air Terminal Inc*., 411 U.S. 624 (1973)).
  - Wholesales of natural gas in interstate commerce (*Schneidewind v. ANR Pipeline Co*., 485 U.S. 293 (1988).
  - Locomotive equipment (*Kurns v. R.R. Friction Prods. Corp*., 565 U.S. 625 (2012)).

Conflict Preemption

- There are two forms of conflict preemption:
  - **Impossibility Preemption**: compliance with both federal and state law is a physical impossibility. See *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).
  - **Obstacle Preemption:** the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. *See Crosby v. NFTC*, 530 U.S. 363 (2000).

Examples of Impossibility Preemption

- *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132 (1963).
- *PLIVA v. Mensing*, 570 U.S. 472, 493 (2013) and *Mutual Pharmaceutical Co. v. Bartlett,* 564 U.S. 604 (2011).
- Compared with other types of preemption, it is relatively rare to have a situation where it is impossible to comply with both federal and state law. Case law not as well developed as other sources of preemption.

Examples of Obstacle Preemption

- *Crosby v. NFTC*, 530 U.S. 363 (2000)(foreign sanctions).
- *Geier v. American Honda Motor Co.*, 529 U.S. 861, 865 (2000)(automobile safety regulations).
- *Felder v. Casey*, 487 U.S. 131 (1988) (federal civil rights).

Complete versus Partial Preemption

- Preemption occurs on a continuum ranging from absolute preemption to partial preemption. Thus, when a Court finds state laws preempted, the Court still must determine the scope of any preemption.

RECENT MINNESOTA CASES ADDRESSING PREEMPTION

DSCC v. Simon, 950 N.W.2d 280 (Minn. 2020)

- Minnesota statute at issue: A person who assists the voter, either in marking a ballot or delivering a marked ballot, cannot assist "more than three voters." Minn. Stat. § § 204C.15, subd. 1; 203B.08, subd. 1.
- Federal law at issue: Section 208 of the federal Voting Rights Act provides that a voter "who requires assistance to vote" due to a disability or "inability to read or write may be given assistance by a person of the voter's choice," other than the voter's employer, an agent of the employer, or an officer or agent of the voter's union. 52 U.S.C. § 10508.
- Issue: Whether Minnesota's statutory limit on the number of voters that may be assisted in marking a ballot and the limit on the number of completed ballots that may be collected for delivery, conflict with and therefore are preempted by section 208 of the Voting Rights Act.
- District Court concluded that the Democratic committees were likely to succeed on the merits of their claims and had demonstrated that a temporary injunction was warranted. After appeal, the Minnesota Supreme Court granted accelerated review.

DSCC v. Simon, 950 N.W.2d 280 (Minn. 2020)

- Minnesota Supreme Court engaged in a conflict preemption analysis (obstacle preemption).
- The Court concluded that section 208 preempted Minnesota's three-voter limit **on marking assistance** because the limit stands as an obstacle to the objectives and purpose of section 208 by disqualifying a person from voting if the assistant of choice is, by reason of other completed assistance, no longer eligible to serve as the voter's "choice."
- However, the Court concluded that section 208 did not preempt Minnesota's three voter limit **on delivering a marked ballot.**

Musta v. Mendota Heights Dental Center, 965 N.W. 312 (Minn. 2021)

- Issue: Whether the Controlled Substances Act (CSA) preempts an order under Minnesota's workers' compensation law requiring an employer to reimburse an injured employee for the cost of medical cannabis used to treat a work-related injury.
- Court engaged in a conflict preemption analysis (impossibility preemption).
- Held: The CSA preempts the compensation court's order requiring the employer to pay for an employee's medical cannabis.
- Petition for writ of certiorari filed with US Supreme Court in November 2021. On February 22, 2022, the US Solicitor General was invited to file a brief in the case expressing the views of the United States.

Bierbach v. Digger's Polaris, 965 N.W.2d 281 (Minn. 2021)

- Issued by Court at same time as *Musta*.
- Based on reasons stated in *Musta*, the Court held that the CSA preempts the compensation court's order mandating relators to pay for an employee's medical cannabis.

Geyen v. Comm'r of Minnesota Dep't of Hum. Servs., 964 N.W.2d 639 (Minn. Ct. App. 2021)

- Issue: Whether a Minnesota law providing that certain irrevocable trusts become revocable for the sole purpose of determining eligibility for medical assistance for long-term-care services, is preempted by federal law.
- Federal law at issue: Federal law requires state Medicaid plans to comply with 42 U.S.C. § 1396a(a)(18), which provides for different treatment of revocable and irrevocable trusts established by an individual in determining eligibility for Medicaid coverage. For revocable trusts, the corpus of the trust is considered available to the individual for eligibility purposes. However, for irrevocable trusts that cannot benefit the individual, states are required to exclude the trust corpus from consideration in determining eligibility for Medicaid.
- Minnesota law at issue: Minnesota law mandated that an irrevocable trust "becomes revocable" for eligibility purposes when an applicant applies for medical assistance for long-term care if the irrevocable trust was created on or after July 1, 2005, and contains assets of the applicant (or the applicant's spouse).
- Court engaged in a conflict preemption analysis (obstacle preemption).
- Held: By deeming irrevocable trusts to be revocable for purposes of the eligibility determination, Minnesota law conflicts with the federal requirements governing the treatment of irrevocable trusts and stands as an obstacle to Congress's intent regarding the treatment of trusts for Medicaid-eligibility purposes.

Matter of Enbridge Energy, Ltd. P'ship, 964 N.W.2d 173 (Minn. Ct. App. 2021), *review denied* (Aug. 24, 2021)

- Background: In deciding to issue a Certificate of Need for the Line 3 Replacement Pipeline, the Commission considered the comparative risks of continuing to operate the existing Line 3 pipeline.
- Issue: One argument raised by Relators in the appeal was that the Commission lacked authority to consider the condition of existing Line 3 in determining whether to grant the Certificate of Need. Relators asserted that the condition of an existing pipeline is not among the factors that the Legislature explicitly directed the Commission to consider, and that the federal Pipeline Safety Act (PSA) preempts the Commission's consideration of safety issues related to existing Line 3.
- Federal law at issue: The PSA provides "[a] State authority may not adopt or continue in force safety standards for interstate pipeline facilities or interstate pipeline transportation." Thus, the PSA expressly preempts state law in the field of pipeline safety.
- Held: The Court of Appeals rejected this argument, noting that the Commission has not adopted any safety standards—for existing Line 3 or for the new pipeline. Rather, the Commission *considered* the safety of existing Line 3 in deciding whether to grant a certificate of need for replacement Line 3—a decision that it clearly has authority to make.

Williams v. Sun Country, Inc., No. A20-0936, 2021 WL 855890, (Minn. Ct. App. Mar. 8, 2021), *review denied* (June 15, 2021)

- Nonprecedential Opinion.
- Background: Appellants brought suit against Sun Country Airlines, alleging unlawful discrimination based on race and skin color, after they were removed from a return flight to Minnesota. Appellants allege that before their plane departed, "Sun Country staff approached the men and directed them to leave the airplane. Appellants and their companion were the only African American passengers in first class, as everyone else was Caucasian. Additionally, they were the only passengers ordered to leave the airplane. According to appellants, they 'did not engage in any inappropriate, illegal, or disruptive behavior prior to being ordered to leave.' When they asked why they were being instructed to leave the airplane, Sun Country staff informed them that 'Sun Country staff did not feel safe with [appellants and their companion] traveling on the airline.'"
- Court applied a field preemption analysis.
- Held: Appellants' state-law claims fall within the field of aviation safety, a field in which the FAA fully occupies, and therefore are preempted. Court noted that it was undisputed that Sun Country claimed safety reasons as the rationale for removing Appellants. Those reasons may or may not have been pretext, but placed the case within the field of air safety.
- Important Note: Court noted that the question was not whether appellants could bring any claims against Sun Country, but whether they must bring federal claims instead of state claims.

Charter Advanced Servs., LLC v. Lange, 903 F.3d 715 (8th Cir. 2018)

- Issue: Whether state regulation (by MPUC) of voice over internet protocol (VoIP) services was preempted by federal law (Telecommunications Act of 1996).
- Regulatory Background: How a service is classified affects a state's ability to regulate the service. Telecommunications services are generally subject to dual state and federal regulation. By contrast, state regulation of an information service conflicts with the federal policy of nonregulation, so that such regulation is preempted by federal law.
- The MPUC sought to regulate Charter Advanced by asserting that VoIP is a "telecommunications service" as defined by the Act. Charter responded by filing an action in the district court arguing that Spectrum Voice is an "information service" under the Act, requiring preemption of state regulation. The district court concluded that Spectrum Voice was an information service. The MPUC appealed.
- Eighth Circuit Held: VoIP service is an "information service" under the Telecommunications Act and that state regulation of VoIP services is therefore preempted.
- Note: MPUC sought review at the Supreme Court. When the Supreme Court denied review, Justice Clarence Thomas authored a concurrence to express his doubt that a federal policy of nonregulation could preempt state regulation.

THANK YOU!